CLERK'S COPY

No. 627 went this case out bound separately

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 810

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

ONE 1936 MODEL FORD V-8 DE LUXE COACH, MOTOR NO. 18-3306511, COMMERCIAL CREDIT COMPANY, CLAIMANT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 25, 1938
CERTIORARI GRANTED APRIL 4, 1938

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 815

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

ONE 1936 MODEL FORD V-8 DE LUXE COACH, MOTOR NO. 18-3306511, COMMERCIAL CREDIT COMPANY, CLAIMANT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

INDEX

TRANSCRIPT OF RECORD

INTRODUCTION.

THE UNITED STATES OF AMERICA,
Western District of South Carolina, to wit:

At a District Court of the United States for the Western District of South Carolina, begun and held at the Federal Building in the City of Spartanburg on the 26th day of June, in the year of our Lord one thousand, nine hundred and thirty-seven.

PRESENT: The Honorable C. C. Wyche, United States District Judge for the Western District of South Carolina.

Among other were the following proceedings, to wit:

STIPULATION OF COUNSEL.

(2) Filed August 31, 1937.

UNITED STATES OF AMERICA,
Western District of South Carolina.

IN THE DISTRICT COURT.

United States of America,

vs. L-2612

One 1936 Model Ford V-8 DeLuxe Coach, Motor No. 18-3306511—Owned, or supposed to be owned by Benjamin Guy Walker and Archie Williams.

It is hereby stipulated by counsel that the automobile in this case was legally seized, regularly proceeded against in a proceeding under the statute for forfeiture, and that in said proceeding said automobile was for-

feited to the United States of America by order duly entered in said case, and that said order of forfeiture is in all respects valid.

(Signed) HICKS & JOHNSTON,
Attorneys for Claimant,
Commercial Credit Company.

O. H. DOYLE,
United States Attorney.

Greenville, S. C.,
August 26th, 1937.

RETURN TO LIBEL.

(3) Filed January 22, 1937.

UNITED STATES OF AMERICA,
Western District of South Carolina.

IN THE DISTRICT COURT.

United States of America,

vs.

One 1936 Ford V-8 DeLuxe Coach, Motor No. 18-3306511—Owned or supposed to be owned by Benjamin Guy Walker and Archie Williams.

To the Honorable Judges, United States District Court for the Western District of South Carolina:

The claimant, Commercial Credit Company, a corporation chartered under the laws of the State of South Carolina, making a return to the libel of the United States of America in the above-entitled matter, respectfully shows:

I.

That the Commercial Credit Company is a corporation

duly chartered under the laws of the State of South Carolina, with one of its principal places of business in Greenville, South Carolina.

II.

That upon information and belief it admits Paragraphs 1 and 2 of the libel.

III.

That on or about October 3rd, 1936, Landrum P. Walker, of Echols Street, Greenville, South Carolina, purchased the Ford Coach described hereinabove, from the Greenville Auto Sales, Incorporated, of Greenville, S. C., trading in a 1934 Ford Coach at a valuation of Three Hundred Twenty-Five ($325.00) Dollars, leaving (4) a balance due of Five Hundred Twenty ($520.00) Dollars, payable in twenty (20) equal monthly installments of Twenty-Five ($25.00) Dollars each, and one (1) installment of Twenty ($20.00) Dollars, beginning November 3rd, 1936, which was evidenced by a certain note and mortgage given by Landrum P. Walker to the Greenville Auto Sales, Incorporated, dated October 3rd, 1936.

That said note and mortgage, or conditional sales agreement, was offered to your claimant, the Commercial Credit Company, who, before purchasing same, had an exhaustive investigation made by two or more credit agencies, of Landrum P. Walker, especially with reference to dealing in alcoholic liquors and such information was to the effect that he did not handle or have any connection with alcoholic liquors. That, therefore, it purchased said note and mortgage from the Greenville Auto Sales, Incorporated, and is now the bona fide holder of said note and mortgage, for value before maturity; and there is a balance due by the said Landrum P. Walker on the said automobile, of Four Hundred Ninety-Five ($495.00) Dollars.

WHEREFORE, the Commercial Credit Company, a corporation, respectfully prays:

(1) That the above-described automobile be turned over to it under the terms of its mortgage; or,

(2) That they be paid the sum of Four Hundred Ninety-Five ($495.00) Dollars, which is the balance due on said automobile; and,

(3) For such other and Further relief as may be deemed just and equitable.

/s/ HICKS AND JOHNSTON,
Attorneys for the claimant,
Commercial Credit Company,
a corporation.

State of South Carolina,
(5) County of Greenville.

PERSONALLY APPEARS before me R. P. Johnson, who, after being duly sworn, says: That he is the manager of the Greenville Branch of the Commercial Credit Company; that he has read the allegations in the foregoing Return, and knows that they are true, except as to those matters which are alleged to be upon information and belief, and as to those, he believes them to be true.

/s/ R. P. JOHNSON.

SWORN TO AND SUBSCRIBED before me this the 22nd day of January, 1937.

/s/ MARY M. RAST (Seal)
(Notarial Seal) Notary Public for S. C.

Service Accepted

Greenville, S. C.

Jan. 22, 1937

/s/ E. P. RILEY, Asst. U. S. Atty.
Attorney for United States

OPINION.

(6) Filed June 5, 1937.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF SOUTH CAROLINA.

United States of America,

v. L/2612

One 1936 Model Ford V-8 DeLuxe Coach, Motor No. 18-3306511—Owned or supposed to be owned by Benjamin Guy Walker and Archie Williams.

On December 3, 1936, officers of the Alcoholic Tax Unit seized a 1936 Ford V-8 DeLuxe Coupe, Motor No. 18-3306511 on the ground that it was being used by one Benjamin Guy Walker in the unlawful transportation of distilled spirits upon which the federal tax had not been paid. An indictment subsequently charged him with such violation of the Internal Revenue laws, to which he plead guilty and upon which he was thereafter duly sentenced in the court.

A libel was filed by the United States of America for the forfeiture of the automobile under section 3450 of the Revised Statutes, 26 U. S. C. A. 1156 and 1441. The Commercial Credit Company, having an interest in the automobile under a conditional sales contract, of which it is the assignee, intervened and duly made return to the libel, admitted the material allegations thereof, and prayed for a remission or mitigation of forfeiture under the provisions of 27 U. S. C. A. 40a.

A jury trial was waived and the matter was heard by me at Spartanburg, South Carolina, on the 3rd day of May, 1937. The facts practically undisputed, as disclosed by the evidence introduced at the trial, are as follows:

The Ford automobile was sold by the Greenville Auto

Sales, Incorporated (hereinafter referred to as the dealer) on October 3, 1936, through its agent, to Benjamin Guy Walker, who in part payment of the purchase price of the Ford automobile exchanged an old car paid (7) for by him, but registered in his wife's name. He was given terms for the payment of the purchase price under a conditional sales contract, but the contract, drawn by an agent of the dealer, was made in the name of his brother, Landrum P. Walker, who formally executed the agreement by signing it "L. P. Walker", and who was commonly known as Paul Walker. Benjamin Guy Walker and his wife at the time of the sale were having some domestic infelicities and he had the conditional sales contract drawn and executed in the name of his brother in order to place the title of the new automobile "where his wife could not reach it". Landrum P. Walker had no interest in the transaction except to comply with the request of his brother. Guy Walker made the transaction with the dealer through its agent, Mr. Elrod. He selected the car he wanted, made the agreement and handled the transaction himself. Paul Walker drove the car from the place of business of the dealer. Guy Walker at the time, and for two or three weeks after the purchase of the car, was living at the home of his brother. Only one payment was made on the conditional sales contract before the seizure, and that was made by Guy Walker to the dealer.

It was admitted by all the parties that Benjamin Guy Walker had a previous record and a reputation for violating both the state and federal laws relating to liquor. His brother, Paul Walker, was convicted of violating the National Prohibition Act in 1929, and was duly sentenced therefor in this court, but his record and reputation since serving the sentence imposed were good.

On the date the sale was consummated the dealer submitted the contract to the Commercial Credit Company, (8) the claimant here, who accepted by telephone, and subsequently on October 5th, in the usual course of business the dealer assigned the contract to the claimant and received a check for the same.

The claimant before accepting the assignment of the sales contract from the dealer made an investigation of

Landrum P. Walker by inquiring at the headquarters of the Sheriff of Greenville County, and at the headquarters of the Chief of Police of the City of Greenville, the County and City where the interest was acquired and the locality where Landrum P. Walker resided, as to the record and reputation for violation of the liquor law by Landrum P. Walker. The information was received from such offices that Landrum P. Walker had no such record or reputation. The information was given, however, from the Sheriff's office that Guy Walker had both a record and a reputation as a violator of the state and federal laws relating to liquor. No inquiry or investigation was made at the headquarters of the principal Federal internal-revenue officer engaged in the enforcement of the liquor laws in that locality, or at the headquarters of any other principal local or federal law enforcement officer of the locality as to Paul Walker, and no inquiry or investigation whatsoever was made of Benjamin Guy Walker, the admitted real owner and purchaser of the automobile.

The claimant had Landrum P. Walker investigated in August, 1936, by the Business Service Bureau of Greenville, South Carolina, in connection with his purchase of a refrigerator. However, no investigation at that time was made as to whether or not he had a reputation or record for violating the liquor laws; the investigation did disclose that he had a good reputation in the community where he lived, and such was the reputation given him by his employer at that time.

The claimant purchased the conditional sales contract (9) in good faith, believing that Landrum P. Walker was the purchaser and owner of the automobile. It had no knowledge, information or suspicion of the true facts until after the automobile had been seized by federal officers.

The automobile is subject to forfeiture under the statute. (26 U. S. C. A. 1441) Grant v. United States, 254 U. S. 505, 41 S. Ct. 189, 65 L. Ed. 376; United States v. One Ford Coupe Automobile, 272 U. S. 321, 329 47 S. Ct. 154, 71 L. Ed. 279, 47 A. L. R. 1025.

The claimant asks for remission or mitigation of for-

feiture on the ground that it is an innocent purchaser of the contract in good faith, without any knowledge or reason to anticipate an illegal use of the car and relies upon the recent Act of Congress, known as Liquor Law Repeal and Enforcement Act of August 27, 1935, 49 Stat. 872, sec. 204 (27 U. S. C. A. 40a) which provides as follows:

"(a) Jurisdiction of court. Whenever, in any proceeding in court for the forfeiture, under the internal-revenue laws, of any vehicle or aircraft seized for a violation of the internal-revenue laws relating to liquors, such forfeiture is decreed, the court shall have exclusive jurisdiction to remit or mitigate the forfeiture.

"(b) Conditions precedent to remission or mitigation. In any such proceeding the court shall not allow the claim of any claimant for remission or mitigation unless and until he proves (1) that he has an interest in such vehicle or aircraft, as owner or otherwise, which he acquired in good faith, (2) that he had at no time any knowledge or reason to believe that it was being or would be used in the violation of laws of the United States or of any State relating to liquor, and (3) if it appears that the interest asserted by the claimant arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating laws of the United States or of any State relating to liquor has a right with respect to such vehicle or aircraft, that, before such claimant acquired his interest, or such other person acquired his right under such contract or agreement, whichever occurred later, the claimant, his officer or agent, was informed in answer to his inquiry, at the headquarters of the sheriff, chief of police, principal Federal internal-revenue officer engaged (10) in the enforcement of the liquor laws, or other principal local or Federal law-enforcement officer of the locality in which such other person acquired his right under such contract or agreement, of the locality in which such other person then resided, and of each locality in which the claimant has made any other inquiry as to the character or financial standing of such other person, that such other person had no such record or reputation."

The only question involved in this case is whether the

facts present a reasonable basis for the exercise by this court of the power created by the foregoing statute to remit or mitigate the forfeiture.

The claimant has an interest in the automobile which was acquired in good faith. The claimant had at no time any knowledge or any reason to believe that the automobile was being, or would be used in violation of the laws of the United States, or any state relating to intoxicating liquors. The first two requirements of the statute have thus been complied with. The controversy, therefore, revolves around subdivision (3) of the statute.

It is claimed by counsel for the United States that this court should not allow the claim for remission or mitigation because the real purchaser of the automobile was Benjamin Guy Walker, who had a record and reputation for violating both the state and federal laws relating to liquors; because the claimant made no effort to investigate the true facts of the transaction under which the said automobile was sold and the ownership transferred to Benjamin Guy Walker, and made no investigation or inquiry of his record and reputation for violating the liquor laws.

The recent decision of the Circuit Court of Appeals of this Circuit in the case of C. I. T. Corporation v. United States of America, decided May 7, 1937, disposes of this (11) contention. In that case a dealer sold an automobile to one W. M. Turner under a conditional sales contract, which on the same date was duly assigned to a finance company. The car was seized from Callie Shelton and Sonny Frazier, who were using it for the unlawful removal and concealment of untaxpaid liquor. Callie Shelton and Edith Shelton, his wife, were the real purchasers of the car. W. M. Turner, the apparent purchaser, permitted his name to be used with no idea that he was a party in interest in the car for the sole purpose of accommodating the Sheltons whom he served as customers of an ice company for which he drove a truck. The dealer knew that the Sheltons were the real purchasers and that Turner had only allowed his name to be used, but the finance company purchased the conditional sales contract in good faith, believing that Turner was the purchaser of the car, and having no

knowledge or even suspicion of the true facts until after the car had been seized. Investigation of Turner by the finance company disclosed that he was not a violator and had no reputation of being a violator of the liquor laws. The Sheltons had a record and reputation as violators of such laws. In reversing the District Court, who denied remission or mitigation of forfeiture, Judge Soper, writing the opinion of the Court, said:

"* * * the three statutory conditions were complied with, and we must decide a question not necessarily involved in the prior decision, (C. I. T. Corporation v. United States, 86 F. (2d) 311) that is, whether the District Court is obliged to remit or mitigate a forfeiture when this situation is found to exist. We think that the court is not so restricted in the exercise of its power. The court is not permitted to strike out a forfeiture unless the statutory conditions are met, but even if they are met, the court may still exercise its judgment and in a proper case decline to remit or mitigate the forfeiture. The language of the statute transferring to the court exclusive jurisdiction to exercise a power formerly exer-
(12) cised in the discretion of officials of the Treasury De-
partment (see 26 U. S. C. A. 1624, 1626, 19 U. S. C. A. 532) and forbidding the court to act favorably unless the claimant proves that he has complied with the statute, suggests that no other restrictions upon the court were intended. Nevertheless remission or mitigation of a forfeiture when the statutory conditions are met may not be unreasonably withheld, and in passing upon the question in any case the remedial purpose of the statute must be borne in mind. Manifestly the act was passed to ameliorate the hardships suffered by innocent lienors from the seizure of offending vehicles, and the reference in the third condition of the act to interests of the claimant and of the violator of the law in the vehicle under a contract or agreement shows that Congress had especially in mind the rights of finance companies under conditional sales contracts, which undoubtedly constitute the most numerous class to which the act applies. In effect, the act merely restored in modified form the protection afforded to innocent lienors by Section 26 of the National Prohibition Act. See Richbourg Motor Co. v. United States, 281 U. S. 528.

"When the facts of the pending case are approached from this viewpoint, we fail to find sufficient reason in the opinion of the court for the denial of the relief prayed. It cannot be found in the fact that the contract of sale was immediately transferred by a guilty dealer to an innocent lienor, for it may not be supposed that as a rule the dealer would be willing to sell his goods on credit to a known violator of the law and thus run the risk of forfeiture, or that the dealer with guilty knowledge would assign the contract to an innocent finance company and run the risk of a disruption of a helpful business arrangement. Indeed if liehors who accept from dealers assignments of conditional sales contracts immediately after the execution of the papers are excluded from the benefits of the act, the purpose of the act to a large extent will be frustrated. It is common practice for automobile dealers promptly to assign conditional sales contracts to finance companies in order to secure at once the proceeds of the sales."

This Court, therefore, cannot refuse to grant the prayer of the claimant for remission or mitigation of forfeiture on this ground.

Counsel for the Government, however, contend that claimant failed to investigate the record and reputation of the fictitious purchaser, Landrum P. Walker, at the headquarters of the principal Federal internal-revenue officer engaged in the enforcement of the liquor laws in the locality where the interest was acquired, and where Landrum P. Walker resided, basing such contention upon the theory that the statute requires that inquiry be made at the headquarters of the sheriff, Chief of Police and principal Federal internal-revenue officer in (13) such locality.

In disposing of this phase of the statute, the Circuit Court of Appeals of the Second Circuit in an opinion in the case of United States v. One 1935 Dodge Rack-Body truck, etc. 88 F. (2d) 613, said:

"Inquiry as to reputation of purchaser of motor vehicle need not be made at headquarters of all officers mentioned in statute, but negative response obtained upon inquiry at headquarters of any one of them in each

locality where inquiry must be made will fulfill minimum of conditions precedent to remission or mitigation of forfeiture."

This construction of the statute is supported by the report of the Chairman of the Committee on the Judiciary of the United States Senate on July 29, 1935, and the Chairman of the Committee on the Judiciary of the House of Representatives on July 22, 1935, in relating the purpose and scope of the bill in the following words:

"Certain standards are given to the court to guide it in this determination. Thus, under subsection (b), the claimant must prove that he acquired his interest in good faith, that he had no knowledge or reason to believe that the vehicle or aircraft was being or would be used in violating Federal or State liquor laws, and that, if his interest arises out of, or is subject to, any agreement under which any person having a record or reputation for violating Federal or State liquor laws has a right with respect to the vehicle or aircraft, the claimant, before he acquired his interest, or before the other person acquired his right, whichever of these events occurred later, inquired at the headquarters of *the principal local or Federal law enforcement officer* in the locality where such other person acquired his right, of the locality in which such other person then resided, and of each locality where the claimant made inquiry as to the character or credit standing of such other person, whether the other person had such a record or reputation, and was informed he had not. This last requirement is predicated upon the recognition of the 'bootleg hazard' as an element to be considered in investigating a person as a credit risk. As a matter of sound business practice, automobile dealers, finance companies, and prospective lienholders on automobiles examine records, and make inquiry of references and credit rating agencies as to the owner's or prospective purchaser's reputation for paying his debts and his ability to do so. This subsection merely requires that in the making of such inquiry, the 'bootleg hazard' also be examined as one aspect of the credit risk." (Italic added)

At the hearing on the bill before the Committee on the Judiciary of the United States Senate, August 15,

(14) 1935, a representative of the Treasury Department testifying before the Committee as to the purpose of this section said:

"What this section will do, in the case of any court proceeding for the forfeiture of vehicles or aircraft, is to give the court jurisdiction to determine whether or not the person claiming to have an innocent interest actually had such interest. Under the present practice the Secretary of the Treasury requires such a showing. * * * This section is of particular importance in connection with the discounting by a finance company of an automobile dealer's paper.

"At the present time, the Secretary of the Treasury considers that the bootleg hazard is an element involved in the credit risk, and is just as much a part of the investigation by the finance company of a person as a credit risk as is his financial standing in the community. He requires that before a car be returned to the person claiming an innocent interest, the latter must prove that he made an investigation as to whether or not the purchaser had a bootlegger record, and found that he had none."

The claimant made inquiry at the headquarters of the principal local enforcement officer in the locality where the interest was acquired and where L. P. Walker resided. Therefore, the three statutory conditions have been complied with by the claimant, and since there does not appear to be any fact growing out of the testimony requiring the court to decline to remit or mitigate the forfeiture the prayer of the claimant must be and is granted.

Counsel may present in due course an appropriate order in accordance with the views expressed in this opinion.

C. C. WYCHE,
United States District Judge.

June 4, 1937.

ORDER.

(15) Filed June 26, 1937.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF SOUTH CAROLINA.

United States of America,

vs. L/2612

One 1936 Model Ford V-8 DeLuxe Coach, Motor No. 18-3306511—Owned or supposed to be owned by Benjamin Guy Walker and Archie Williams.

The above-entitled matter was commenced by Petition of the United States of America, praying for the forfeiture of the defendant automobile. The forfeiture was ordered and the Commercial Credit Company filed its Petition for remission or mitigation of the forfeiture. The matter was heard by me without a jury (jury trial having been waived by both parties), and on the 5th day of June, 1937, my Opinion as to the claim of the Commercial Credit Company for remission or mitigation was filed with the Clerk of the United States District Court for the Western District of South Carolina, which Opinion is hereby incorporated and made a part of this Order.

NOW, therefore, upon motion of Hicks & Johnston, Attorneys for the Claimant, Commercial Credit Company, it is,

ORDERED:

THAT the defendant automobile be and the same is hereby released unto the Commercial Credit Company, according to its interest therein; and that the Commercial Credit Company pay all costs and expenses incident to the seizure and forfeiture which have been in-
(16) curred by the United States of America.

/s/ C. C. WYCHE,
United States District Judge.

Spartanburg, S. C.,
June 26, 1937.

PLAINTIFF'S EXCEPTIONS TO OPINION AND ORDER OF COURT.

(17) Filed July 23, 1937.

(Style of Court and Title Omitted.)

Now comes the United States of America, by O. H. Doyle, United States Attorney for the Western District of South Carolina, and excepts in the following particulars to the Court's opinion and order in the above entitled case:

(1) That plaintiff, United States of America, excepts to the Court's ruling that claimant, Commercial Credit Company, established by greater weight of the evidence its right to remission or mitigation of forfeiture of the automobile involved in this case.

(2) That plaintiff excepts to His Honor's ruling that showing made by claimant as to its investigation of prospective purchaser was a sufficient compliance with the statute.

(3) That plaintiff excepts to His Honor's ruling that the duty was not on claimant to investigate the real purchaser of said automobile and that investigation of the fictitious purchaser or straw purchaser was sufficient.

(4) That the plaintiff excepts to His Honor's ruling that knowledge on the part of Greenville Auto Sales, Incorporated, who sold the automobile to the purchaser and (18) in turn sold the conditional sales contract covering said purchase to the claimant, was not imputed to the claimant, Commercial Credit Company.

(5) That the plaintiff excepts to His Honor's ruling that the facts taken from the testimony in this case are not sufficient to require the Court to decline to remit or mitigate the forfeiture.

Respectfully submitted:

O. H. DOYLE,
United States Attorney.

Greenville, S. C.
June 26, 1937.

The above exceptions noted and allowed.

C. C. WYCHE,
United States District Judge.

June 26, 1937.

ORDER EXTENDING TIME FOR SERVING, SETTLING AND ALLOWING BILL OF EXCEPTIONS.

(19) Filed July 10, 1937.

(Style of Court and Title Omitted.)

Upon motion of O. H. Doyle, United States Attorney for the Western District of South Carolina, pending receipt by him of instructions from the Attorney General as to whether an appeal will be authorized,

IT IS ORDERED: That the time for serving, settling and allowing bill of exceptions in the above entitled case be, and the same is hereby extended for a period of sixty (60) days from July 26, 1937.

/s/ C. C. WYCHE,
United States District Judge.

Spartanburg, S. C.
July 10, 1937.

ASSIGNMENTS OF ERROR.

(20) Filed August 25, 1937.

(Style of Court and Title Omitted.)

Now comes the United States of America, by O. H. Doyle, United States Attorney for the Western District of South Carolina, and in connection with it's petition for appeal in the above entitled case assigns the following errors in the decision and order by the Court:

1. That the Court erred in holding that claimant, Commercial Credit Company, established by greater weight of the evidence its right to remission or mitigation of forfeiture of the automobile involved in this case.

2. That the Court erred in holding that showing made by claimant as to its investigation of prospective purchaser was a sufficient compliance with the statute.

3. That the Court erred in holding that the duty was not on claimant to investigate the real purchaser of said automobile and that investigation of the fictitious purchaser or straw purchaser was sufficient.

4. That the Court erred in holding that knowledge on (21) the part of Greenville Auto Sales, Incorporated, who sold the automobile to the purchaser and in turn sold the conditional sales contract covering said purchase to the claimant, was not imputed to the claimant, Commercial Credit Company, at the time the conditional sales contract was accepted by the Commercial Credit Company.

5. That the Court erred in holding that the Greenville Auto Sales, Incorporated, by accepting payment on the conditional sales contract from the real purchaser and known violator of the law, did not then become agent of the Commercial Credit Company to the extent that knowledge on the part of Greenville Auto Sales, Incorporated, would be imputed to the Commercial Credit Company.

6. That the Court erred in holding that the facts taken from the testimony in this case are not sufficient to require the Court to decline to remit or mitigate the forfeiture.

7. Other errors of law apparent on the face of the record.

WHEREFORE, the United States of America prays that the judgment of the District Court be reversed, and that judgment be rendered in favor of the United States of America.

O. H. DOYLE,
United States Attorney.

Greenville, S. C.,
August 16th, 1937.

BILL OF EXCEPTIONS.

(22) Filed August 31, 1937.

(Style of Court and Title Omitted.)

BE IT REMEMBERED that on the 3rd day of May, 1937, this matter was heard by Honorable C. C. Wyche, United States District Judge for the Western District of South Carolina, counsel having agreed that the cause be heard by Judge Wyche without a jury. By stipulation between counsel it is admitted that the forfeiture was regular in all respects, and the only issue raised before His Honor, Judge Wyche, was the claim for remission or mitigation of the forfeiture, filed by Commercial Credit Company. The Judge heard the evidence in the case, and by agreement of counsel the testimony was not taken, but that the Judge would find the facts. The following portion of the Judge's opinion, which constitutes his findings of fact, is, by agreement of counsel, the facts in this case:

"The Ford automobile was sold by the Greenville Auto Sales, Incorporated (hereinafter referred to as the dealer) on October 3, 1936, through its agent, to Benjamin Guy Walker, who in part payment of the purchase price of the Ford Automobile exchanged an old car paid for by him, but registered in his wife's name. He was given terms for the payment of the purchase price under a conditional sales contract, but the con-
(23) tract, drawn by an agent of the dealer, was made in the name of his brother, Landrum P. Walker, who formally executed the agreement by signing it "L. P. Walker", and who was commonly known as Paul Walker. Benjamin Guy Walker and his wife at the time of the sale were having some domestic infelicities and he had the conditional sales contract drawn and executed in the name of his brother in order to place the title of the new automobile "where his wife could not reach it". Landrum P. Walker had no interest in the transaction except to comply with the request of his brother. Guy Walker made the transaction with the dealer through its agent, Mr. Elrod. He selected the car he wanted, made the agreement and handled the

transaction himself. Paul Walker drove the car from the place of business of the dealer. Guy Walker at the time, and for two or three weeks after the purchase of the car, was living at the home of his brother. Only one payment was made on the conditional sales contract before the seizure, and that was made by Guy Walker to the dealer.

"It was admitted by all the parties that Benjamin Guy Walker had a previous record and a reputation for violating both the state and federal laws relating to liquor. His brother, Paul Walker, was convicted of violating the National Prohibition Act in 1929, and was duly sentenced therefor in this court, but his record and reputation since serving the sentence imposed were good.

"On the date the sale was consummated the dealer submitted the contract to the Commercial Credit Company, the claimant here, who accepted by telephone, and subsequently on October 5th, in the usual course of business the dealer assigned the contract to the claimant and received a check for the same.

The claimant before accepting the assignment of the sales contract from the dealer made an investigation of Landrum P. Walker by inquiring at the headquarters of the Sheriff of Greenville County, and at the headquarters of the Chief of Police of the City of Greenville, the county and city where the interest was acquired, and the locality where Landrum P. Walker resided, as to the record and reputation for violation of the liquor law by Landrum P. Walker. The information was received from such offices that Landrum P. Walker had no such record or reputation. The information was given, however, from the Sheriff's office that Guy Walker had both a record and reputation as a violator of the state and federal laws relating to liquor. No inquiry or investiga-
(24) tion was made at the headquarters of the principal Federal Internal Revenue officer engaged in the enforcement of the liquor laws in that locality, or at the headquarters of any other principal local or federal law enforcement officer of the locality as to Paul Walker, and no inquiry or investigation whatsoever was made of Benjamin Guy Walker, the admitted real owner and purchaser of the automobile.

"The claimant had Landrum P. Walker investigated in August, 1936, by the Business Service Bureau of Greenville, South Carolina, in connection with his purchase of a refrigerator. However, no investigation at that time was made as to whether or not he had a reputation or record for violating the liquor laws; the investigation did disclose that he had a good reputation in the community where he lived, and such was the reputation given him by his employer at that time.

"The claimant purchased the conditional sales contract in good faith, believing that Landrum P. Walker was the purchaser and owner of the automobile. It had no knowledge, information or suspicion of the true facts until after the automobile had been seized by federal officers.

"The automobile is subject to forfeiture under the statute. (26 U. S. C. A., 1441) Grant v. United States, 254 U. S., 505, 41 S. Ct. 189, 65 L. Ed. 376; United States v. One Ford Coupe Automobile, 272 U. S., 321, 329, 47 S. Ct. 154, 71 L. Ed., 279, 47 A. L. R. 1025.

"The claimant asks for remission or mitigation of forfeiture on the ground that it is an innocent purchaser of the contract in good faith, without any knowledge or reason to anticipate an illegal use of the car, and relies upon the recent Act of Congress, known as Liquor Repeal and Enforcement Act of August 27, 1935, 49 Stat. 872, Sec. 204 (27 U. S. C. A., 40a)."

By the opinion of the Court above referred to the Trial Judge granted the claim of the Commercial Credit Company for remission and mitigation of the forfeiture, and the United States of America, by O. H. Doyle, United States Attorney for the Western District of South Carolina, made certain exceptions to the Court's ruling. Said exceptions were noted and allowed by the court.

STIPULATION AND AGREEMENT AS TO BILL OF EXCEPTIONS.

(25)

It is hereby stipulated and agreed by and between counsel for each side that the foregoing shall constitute and be the *fil* of exceptions in the record on appeal in this case, and the same is respectfully submitted to the Trial Judge for settlement and allowance.

(Signed) HICKS & JOHNSTON,
Attorneys for Claimant,
Commercial Credit Company.

O. H. DOYLE,
United States Attorney.

Due and legal service of Bill of Exceptions accepted this 26 day of August, 1937.

(Signed) HICKS & JOHNSTON,
Attorneys for Claimant,
Commercial Credit Company.

ORDER SETTLING AND ALLOWING BILL OF EXCEPTIONS.

The foregoing Bill of Exceptions, as prepared and agreed upon by both sides, is hereby settled and allowed, and ORDERED to be made a part of the appeal record in this case.

(Signed) C. C. WYCHE,
United States District Judge.

Spartanburg, S. C.,
August 31, 1937.

STIPULATION TO PREPARE TRANSCRIPT OF RECORD AND PRINT SAME UNDER RULE 23 OF THE UNITED STATES CIRCUIT COURT OF APPEALS.

(26) Filed August 31, 1937.

(Style of Court and Title Omitted.)

It is hereby stipulated and agreed that the clerk of this court shall make up a transcript of the record in the above styled cause, and transmit the same to the Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Va.; and that it be printed under the supervision of the Clerk of that Court, in accordance with Rule 23.

O. H. DOYLE,
United States Attorney,
Counsel for Appellant.

/s/ HICKS & JOHNSTON,
Counsel for Appellee.

August 26th, 1937.

1. Stipulation of Counsel;
2. Return to Libel;
3. Opinion of Court;
4. Judgment of Court;
5. Plaintiff's exceptions to Opinion and Judgment;
6. Order extending jurisdiction;
7. Assignments of error;
8. Bill of exceptions;
9. Stipulation to Prepare Transcript of Record;
10. Memorandum;
11. Clerk's Certificate.

(27) **MEMORANDUM.**

(1) Petition for appeal filed August 25, 1937.

(2) Appeal allowed August 17, 1937—filed August 25, 1937.

(3) Citation—dated August 31, 1937—Acceptance of Service dated August 31, 1937.

(4) Copy of order allowing appeal lodged for adverse party August 25, 1937.

(28) **CERTIFICATE OF CLERK.**

DISTRICT COURT OF THE UNITED STATES OF AMERICA
WESTERN DISTRICT OF SOUTH CAROLINA.

I, W. D. White, Clerk of the District Court of the United States for the Western District of South Carolina, do hereby certify that the writings annexed to this certificate, composed of twenty-seven (27) pages, being the Transcript of Record of all proceedings as agreed upon by counsel in the case of United States of America, Appellant, versus One 1936 Model Ford V-8 DeLuxe Coach, Motor No. 18-3306511—owned or supposed to be owned by Benjamin Guy Walker and Archie Williams, Appellee, Docket No. L/2612 have been compared by me with their originals on file and remaining of record in my office; that they are correct transcripts therefrom and of the whole of the said originals.

In Testimony Whereof, I have hereunto subscribed my name and affixed the Seal of the said Court at the City of Greenville, in the Western District of South Carolina, this 9th day of September, in the year of our Lord One Thousand Nine Hundred and Thirty-seven, and of the Independence of the said United States the One Hundred and Sixty-second.

W. D. WHITE,
(SEAL) W. D. WHITE, Clerk.

F. J. Mitchell Printing Co., Richmond, Va.
5-12-37—65
J—13067

PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 4243

UNITED STATES OF AMERICA, APPELLANT

vs.

ONE 1936 MODEL FORD V-8 DELUXE COACH, MOTOR NO. 18-3306511—OWNED OR SUPPOSED TO BE OWNED BY BENJAMIN GUY WALKER AND ARCHIE WILLIAMS, APPELLEE

Appeal from the District Court of the United States for the Western District of South Carolina, at Greenville

September 10, 1937, the transcript of record is filed and the cause docketed.

Same day, the original petition for appeal, order allowing appeal, and citation are certified up under section 7 of Rule 14.

Same day, the appearance of O. H. Doyle, United States Attorney, is entered for the appellant.

September 14, 1937, the appearance of E. P. Riley and Thomas A. Wofford, Assistant U. S. Attorneys, is entered for the appellant.

September 15, 1937, the appearance of John Wilbur Hicks and John E. Johnston is entered for the appellee.

October 7, 1937, twenty-five copies of the printed record are filed.

November 8, 1937, the appearance of Duane R. Dills and E. E. Heaton is entered for the appellee.

Argument of cause

November 9, 1937 (November term, 1937), cause came on to be heard before Parker and Soper, Circuit Judges, and Coleman, District Judge, and is argued by counsel and submitted.

United States Circuit Court of Appeals, Fourth Circuit

No. 4243

UNITED STATES OF AMERICA, APPELLANT

vs.

ONE 1936 MODEL FORD V-8 DELUXE COACH, MOTOR NO. 18-3306511—OWNED, OR SUPPOSED TO BE OWNED BY BENJAMIN GUY WALKER AND ARCHIE WILLIAMS, APPELLEE

Appeal from the District Court of the United States for the Western District of South Carolina, at Greenville. At law

(Argued November 9, 1937. Decided January 4, 1938)

Opinion

Filed January 4, 1938

Before PARKER and SOPER, Circuit Judges, and COLEMAN, District Judge

Thomas A. Wofford, Assistant U. S. Attorney, and Oscar H. Doyle, U. S. Attorney (Edward P. Riley, Assistant U. S. Attorney, on brief), for Appellant, and Eugene E. Heaton; Hicks & Johnston, and Dills, Muecke Schelker & Levinson for Appellee.

SOPER, Circuit Judge: The question in this case is whether the District Judge was justified in remitting the forfeiture of an automobile which had been seized by federal officers while being used by one B. G. Walker for the unlawful transportation of distilled spirits in violation of R. S. Section 3450, 26 U. S. C. A. 1156, 1441. The automobile was sold on October 3, 1936, at Greenville, South Carolina, to one L. P. Walker by a dealer for the sum of $845, of which $325 was paid, leaving a balance due of $520, evidenced by a promissory note which was secured by a conditional sales contract. The note and contract were assigned for value by the dealer to the Commercial Credit Company. The Credit Company believed that L. P. Walker was the purchaser and owner of the vehicle, but as a matter of fact he was only the nominal purchaser and was acting for his brother, B. G. Walker, who had a previous record and reputation for violating both the State and Federal laws relating to intoxicating liquor. L. P. Walker, the nominal purchaser, had also been convicted of violating the National Prohibition Act in 1929 and had been sentenced therefor, but his subsequent record and reputation had been good. The Credit Company, before accepting the assignment of the sales contract, made an investigation of L. P. Walker by inquiry at the headquarters of the sheriff of Greenville County, South Carolina, and of the chief of police of the city of Greenville, South Carolina, where L. P. Walker resided and where

the contract of sale was signed. The Credit Company was informed that he had no record or reputation for violation of the liquor laws. Information was received from the sheriff's office as to the bad record and reputation of B. G. Walker, but his relationship to L. P. Walker was not disclosed or suspected. No inquiry was made by the Credit Company at the headquarters of the principal federal internal revenue officer engaged in the enforcement of the liquor laws, or of any other principal local or federal law enforcement officer of the locality.

Under these circumstances, the Credit Company made claim for a remission of the forfeiture and the District Judge concluded that it was entitled thereto under the decision of this court in C. I. T. Corporation vs. United States, 89 F. (2d) 977, where we considered the power of the District Court to remit forfeitures and the duty of the lienor to make inquiries in cases of this sort under the Liquor Law Repeal and Enforcement Act of August 27, 1935, 49 Stat. 872, Sec. 204, 27 U. S. C. A. 40 (a). The government contends that the claimant failed to comply with the conditions imposed upon it by sub-section (b) of the act in that (1) it did not prove that it had no reason to believe that the car would not be used in violation of the liquor laws, since the circumstances were such as to call for an investigation which, if made, would have disclosed the true ownership of the car; and (2) that the claimant had not made an inquiry as to the record and reputation of the purchaser of the car of all of the state and federal officials listed in that sub-section of the act.

We are of opinion that the judgment of the District Court should be affirmed. The statute does not require the lienor in transactions of this kind to investigate the purchase of an automobile under a mortgage or conditional sales contract in order to ascertain whether the automobile is being used or will be used in violation of laws relating to intoxicating liquor, unless the lienor has some knowledge or reason to believe that such is the case. It is conceded here that on the day of the sale the dealer submitted the contract to the claimant and two days later assigned the contract to it in the usual course of business; that the claimant in the meantime made the investigation described above and then purchased the contract in good faith, believing L. P. Walker to be the purchaser and owner and without knowledge, information, or suspicion of the true facts. The claimant therefore complied with the conditions of sub-section (b) (1) and (2), for it had acquired its interest in the vehicle in good faith, and had neither knowledge nor reason to believe that it would be illegally used. There was nothing to show that L. P. Walker was not the real purchaser of the car or that seven years before he had violated the National Prohibition Act. The claimant, in our opinion, should not be charged with constructive notice of his conviction shown by the records of the United States Court, as suggested in Universal Credit Company vs. United States, 91 F. (2d) 388, 391, because the statute does not direct an inspection of the court records but merely an inquiry at the headquarters of certain law enforcement officer

Nor was the information received from one of the officials that another Walker had a criminal record sufficient to put the claimant on further inquiry in the absence of any knowledge or reason to suspect his relationship to the ostensible purchaser or his interest in the car. The involved language of sub-section (b) (3) of the act does permit the possible interpretation that the lienor is charged with the duty of making inquiry as to every one, bearing a bad reputation or record, who may have a right under the contract of sale, whether or not it appears on the face of the instrument. See Federal Motor Finance vs. United States, 88 F. (2d) 90. But in our view Congress did not intend to impose upon the lienor the obligation to ascertain at his peril the identity of every person having an interest in the property and to make inquiry of the law enforcement officers as to the previous record and reputation of every such person, unless from the documents themselves or other surrounding circumstances the lienor possesses information which would lead a reasonably prudent and law abiding person to make a further investigation.

The claimant also complied with the conditions set out in subsection (b) (3) of the statute. It does not require, in the event that the purchaser has a record or reputation for violating the liquor laws, that the lienor shall make inquiry of all of the officials mentioned in subsection (b) (3) of the act. They are listed in the disjunctive and it is sufficient if the lienor makes inquiry at the headquarters of one of the named officials, that is, the sheriff, the chief of police, the principal internal revenue officer engaged in the enforcement of the liquor laws, or other principal local or federal law enforcement officer; provided, however, that the inquiry is made of such an official (1) in the locality where the purchaser acquired his right under the contract, and (2) in the locality where the purchaser resides, and (3) in every other locality where the lienor has made any other inquiry as to his character or financial standing. See United States vs. One Dodge Rack Body Truck, 88 F. (2d) 613.

We reiterate the opinion expressed in our former decision that the District Court is not obliged to remit or mitigate a forfeiture in every case in which the lienor has complied with the statutory conditions, but that the court in such event may still exercise its judgment and decline to relieve the lienor when reasonable grounds for such action are found to exist. Compare Universal Credit Co. vs. United States, 91 F. (2d) 388, 390. Such grounds might be deemed to exist if it should be found to be a practice of automobile dealers or their agents to conspire with purchasers, known to be violators of the liquor laws, to conceal their interest in the transactions from the Finance Companies accepting assignments of the conditional sales contracts. In the pending case, however, the District Court, considering all of the circumstances, concluded that the power to remit the forfeiture should be exercised and we find nothing in the record to suggest that the power has been misused.

Affirmed.

United States Circuit Court of Appeals, Fourth Circuit

No. 4243

UNITED STATES OF AMERICA, APPELLANT

vs.

ONE 1936 MODEL FORD V-8 DELUXE COACH, MOTOR NO. 18-3306511—OWNED, OR SUPPOSED TO BE OWNED BY BENJAMIN GUY WALKER AND ARCHIE WILLIAMS, APPELLEE

Judgment

Filed and Entered January 4, 1938

Appeal from the District Court of the United States for the Western District of South Carolina.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of South Carolina, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed.

January 4, 1938.

MORRIS A. SOPER,
U. S. Circuit Judge.

January 25, 1938, petition of appellant for a stay of the mandate is filed.

Order staying mandate

Filed January 26, 1938

(Style of Court and Title Omitted)

Upon the application of the Appellant, by its attorney, O. H. Doyle, U. S. Attorney, and for good cause shown,

It is ordered that the mandate of this Court in the above entitled cause be, and the same is hereby, stayed pending the application of the said Appellant in the Supreme Court of the United States for a writ of certiorari to this Court, unless otherwise ordered by this or the said Supreme Court, and provided said application is filed in the said Supreme Court within 30 days from this date.

January 26, 1938.

JOHN J. PARKER,
Senior Circuit Judge.

Clerk's certificate

UNITED STATES OF AMERICA,
Fourth Circuit, ss:

I, Claude M. Dean, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true copy of the entire record and proceedings in the therein entitled cause, as the same remain upon the records and files of the said Circuit Court of Appeals.

In testimony whereof, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Virginia, this 15th day of February A. D. 1938.

[SEAL]

CLAUDE M. DEAN,
Clerk, U. S. Circuit Court of Appeals,
Fourth Circuit.

U. S. GOVERNMENT PRINTING OFFICE 1938

Supreme Court of the United States

Order allowing certiorari

Filed April 4, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice BUTLER and Mr. Justice STONE took no part in the consideration or decision of this application.

U. S. GOVERNMENT PRINTING OFFICE: 1938

MICROCARD 22

TRADE MARK ®

MICROCARD® EDITIONS, INC.
PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037. PHONE (202) 333-6393

FILE COPY

No. [redacted] 10

In the Supreme Court of the United States

OCTOBER TERM, 1937

UNITED STATES OF AMERICA, PETITIONER

v.

ONE 1936 MODEL FORD V-8 DE LUXE COACH, MOTOR NO. 18-3306511, COMMERCIAL CREDIT COMPANY, CLAIMANT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

INDEX

CITATIONS

47879—38——1

In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 815

UNITED STATES OF AMERICA, PETITIONER

v.

ONE 1936 MODEL FORD V-8 DE LUXE COACH, MOTOR NO. 18-3306511, COMMERCIAL CREDIT COMPANY, CLAIMANT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Acting Solicitor General, on behalf of the United States, prays that a writ of certiorari be issued to review the judgment of the Circuit Court of Appeals for the Fourth Circuit, entered in the above-entitled cause on January 4, 1938, affirming the order of the District Court of the United States for the Western District of South Carolina, which granted the petition of the claimant, Commercial Credit Company, for a remission of the forfeiture of an automobile seized and forfeited under the internal revenue laws.

OPINIONS BELOW

Neither the opinion of the District Court (R. 5–13) nor that of the Circuit Court of Appeals (R. 26–28) has been reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered January 4, 1938. (R. 29.) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the claimant sufficiently complied with the provisions of Section 204 (b), Title II, of the Liquor Law Repeal and Enforcement Act of August 27, 1935, c. 740, 49 Stat. 872, 878, to entitle it to a remission of the forfeiture of an automobile seized and forfeited under the internal revenue laws.

STATUTE INVOLVED

Sections 204 (a) and (b), Title II, of the Liquor Law Repeal and Enforcement Act of August 27, 1935, c. 740, 49 Stat. 872, 878 (U. S. C., Sup. II, Title 27, Sec. 40a), will be found in the Appendix, *infra* pp. 18–19.

STATEMENT

The automobile here involved was seized on December 3, 1936, by Federal officers from one Benjamin Guy Walker while it was being used by him in the unlawful transportation of distilled spirits

upon which the tax had not been paid. He pleaded guilty to an indictment for such violation of the Internal Revenue Laws in the United States District Court for the Western District of South Carolina and was sentenced (R. 5).

A libel was filed in the above District Court for the forfeiture of the automobile under Section 3450, Revised Statutes (U. S. C., Title 26, Sec. 1441). The Commercial Credit Company, assignee of a conditional sales contract, intervened and made return to the libel, admitted the material allegations thereof and prayed for a remission of the forfeiture under Section 204 (a) of the Liquor Law Repeal and Enforcement Act (R. 3–5). Trial was to the court (R. 5) and in its opinion (R. 5–7) it found the facts substantially as follows:

The automobile was sold by the Greenville Auto Sales, Inc., on October 3, 1936, through its agent, to Benjamin Guy Walker, who in part payment of the purchase price turned in an old car. He was given terms for the payment of the purchase price under a conditional sales contract which was made out in the name of and signed by his brother, Landrum P. Walker. Benjamin Walker and his wife had domestic difficulties at the time and the contract was drawn and executed in the name of his brother in order to place the title of the automobile "where his wife could not reach it." Landrum Walker had no interest in the transaction except to comply with the request of his brother. Benjamin Walker selected the car, made the agreement

and handled the transaction himself. Landrum Walker drove the car away from the dealer's place of business. Benjamin Walker at the time, and for two or three weeks thereafter, was living at the home of his brother. Only one payment was made on the contract before the seizure and that was made by Benjamin Walker to the dealer.

It was admitted by all the parties that Benjamin Walker had a previous record and reputation for violating both state and Federal liquor laws. His brother, Landrum Walker, was convicted of violating the National Prohibition Act in 1929, but since then his record and reputation had been good.

On the date the sale was consummated the dealer submitted the contract to the claimant Commercial Credit Company which accepted by telephone, and subsequently on October 5, in the usual course of business, the dealer assigned the contract to the claimant and received a check for the same. Before accepting the assignment of the contract the claimant made an investigation of Landrum Walker by inquiring at the headquarters of the sheriff of Greenville County, South Carolina, and at the headquarters of the chief of police of the City of Greenville, the county and city where the interest was acquired and Landrum Walker resided, as to his record and reputation for violating the liquor laws. The information received was that Landrum Walker had no such record or reputation, but that Benjamin Walker had both a record and reputation for violating state and Federal laws

relating to liquor. No inquiry or investigation whatsoever was made as to Benjamin Walker, the admitted real owner and purchaser of the automobile.

The court ordered the car forfeited, but it held that the claimant had sufficiently complied with the three statutory conditions contained in Section 204 (b) of the Liquor Law Repeal and Enforcement Act to entitle it to a remission of the forfeiture. (R. 7–14.) Upon appeal by the United States to the Circuit Court of Appeals for the Fourth Circuit the judgment of the District Court was affirmed. (R. 29.) The appellate court held that subsections (b) (1) and (2) of the statute had been complied with because the claimant had acquired its interest in the vehicle in good faith and had neither knowledge nor reason to believe that the vehicle would be illegally used, since there was nothing before the claimant to show that Landrum Walker was not the real purchaser. As to subsection (b) (3) it held that this provision of the statute had been complied with when the claimant investigated Landrum Walker, the fictitious or straw purchaser, because the statute did not require a lienor to ascertain at his peril the identity of every person having an interest in the property and to make inquiry of the designated law enforcement officers as to every such person's previous record or reputation, unless from the documents themselves or other surrounding circumstances the lienor possessed information which would lead a reasonably

prudent and law-abiding person to make a further investigation. (R. 26–28.)

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

(1) In holding that the claimant had no reason to believe that the automobile would be illegally used, as that language is employed in subsection (b) (2) of the statute.

(2) In holding that subsection (b) (3) had been sufficiently complied with by the claimant's investigation of the fictitious or straw purchaser.

(3) In holding that the claimant was not required under subsection (b) (3) to investigate the real purchaser.

(4) In failing to hold that it was incumbent upon the claimant to make a reasonable effort to ascertain the identity of the real purchaser so that his previous record and reputation could be investigated in accordance with subsection (b) (3).

(5) In not reversing the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

(1) The court's construction of the statute is, we submit, erroneous in several particulars.

(a) Section 204 (a) gives the District Court jurisdiction to remit or mitigate the forfeiture of an automobile where a forfeiture is decreed under the internal revenue laws. Section 204 (b) specifically provides, however, that such remission shall

not be allowed unless the three conditions therein set forth are complied with. The first two of these conditions are that the claimant must prove (1) that he has an interest in the vehicle which he acquired in good faith, and (2) that he had at no time any knowledge or reason to believe that it would be used in violating Federal or state liquor laws. It is conceded that condition (1) was complied with because the claimant had an interest in the vehicle and because it acquired such interest in good faith, in that it was not a party to the transaction between the dealer and the bootlegger. It may also be admitted with respect to condition (2) that the claimant had no "knowledge" that the vehicle would be illegally used.

The court, however, went further and held that condition (2) was fully complied with because the claimant also had no "reason to believe" that the car would be so used, since there was nothing before the claimant to show that Landrum Walker, the fictitious purchaser, was not the real purchaser of the car. In so holding, we think the court gave too narrow a construction to the statute. The claimant could not close its eyes to an obvious risk and then claim that it had no reason to believe that there was such a risk. Persons dealing in automobiles and in automobile finance paper do so with full knowledge that automobiles are frequently used in violating the law. They are chargeable with knowledge that the courts have uniformly held that auto-

mobiles are especially adapted to violating the liquor laws,[1] and that the greatest risk of persons having an interest in automobile finance paper is the danger of seizure of the automobile for violations of such laws. Claimant must have known from experience that the very device by which it was deceived in this case is frequently employed by bootleggers in purchasing automobiles. Yet in the light of this knowledge and this experience it was satisfied to rely on the information in the documents before it and on the limited investigation made of the fictitious purchaser. It made no effort to ascertain what the true facts surrounding the transaction were. It could readily have inquired of Landrum Walker, whose paper it had before it, whether some one else was interested in the transaction, and of the dealer, from whom it acquired the conditional sales contract, whether the person signing the contract was the real purchaser and user of the car. If either or both of these inquiries had been made the claimant would doubtless have discovered that the automobile in which it was about to buy a substantial interest was not being acquired and used by Landrum Walker, the supposed owner, but by Benjamin Walker, the true owner and a violator of both Federal and state liquor laws.

We submit that a claimant may not be heard to say that it had no reason to believe a thing, within

---

[1] Cf. *Goldsmith-Grant* v. *United States*, 254 U. S. 505, 513.

the meaning of the statute, when it has neglected to use ordinary diligence to discover the facts bearing on a situation or transaction, and that the holding of the court below that this part of the statute had been sufficiently complied with was erroneous.

(b) The court also erred in its construction of subsection (b) (3) of the statute.

This subsection provides that if it appears that the claimant's interest arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating Federal or state liquor laws has a right to the vehicle, then the claimant is required to show, in order to be entitled to a remission of the forfeiture, that before it acquired such interest it made certain investigations of the law enforcement agencies designated in the statute and was informed that such person had no such record or reputation. The court held that the claimant was not required to investigate the real purchaser and user of the car, because there was nothing before the claimant to show that Landrum Walker, the fictitious or straw purchaser, was not the real owner of the car. The statute specifically provides, however, that the person having a "right to the vehicle" shall be investigated. Here the claimant's interest not only arose out of, but was subject to, a contract or agreement with a bootlegger. He was the only purchaser under the contract and the only person having a right to the vehicle. The nominal purchaser had no right to the vehicle or interest in the transaction

whatsoever. To hold, as did the court below, that the claimant was required to investigate only the fictitious purchaser would lead to easy evasion of the statute and the internal revenue laws. An investigation of the fictitious purchaser seldom, if ever, discloses anything against him. This was true in the instant case. The very purpose of such transactions is to avoid an investigation of the real parties in interest. Bootleggers and dealers are cautious to use the names of fictitious persons or straw men with good reputations who will bear investigating, in order to avoid the difficulty of securing the financing of cars purchased on the installment plan.

We submit that under the language of the statute the claimant is required to investigate the real purchaser at his peril and that if he fails to do so, as between it and the Government the claimant assumes the risk of fraud perpetrated upon it by the dealer and the bootlegger.

(c) The court erred in failing to hold that the claimant was in any event required to make a reasonable effort to ascertain the identity of the real purchaser so that he could be investigated as required by subsection (b) (3).

If it be thought that the construction above contended for, that the claimant is required to investigate the real purchaser at its peril, places too strict a construction upon the statute and too great a burden upon the claimant when it has no knowledge or reason to suspect that the person whose

name appears in the documents before it is not the real purchaser, then, we submit, it should at least be required to make a reasonable effort to ascertain whether anyone else is interested in the transaction. The remission statute was not intended to enlarge the opportunities to defraud the revenue. We submit that before a claimant is entitled to the benefits of the statute, it should be required to take reasonable precautions to prevent such frauds. This could readily have been done in the instant case by the claimant inquiring of the fictitious purchaser and the dealer, both of whom were known to it, whether Landrum Walker was the real purchaser of the car. This was a reasonable requirement, and if followed the claimant would doubtless have been informed that the real purchaser was a bootlegger and it would have refrained from financing a car which was likely to be used in violating the law. But whether this be so or not, the claimant made no inquiry of the above persons or anyone else as to the true facts. The court below held that a claimant is not required to investigate everyone, bearing a bad reputation, who may have an interest in the contract of sale, unless from the documents themselves before it or other surrounding circumstances the claimant is put on notice.

We submit that, as held by the Circuit Court of Appeals for the Eighth Circuit in *Federal Motor Finance* v. *United States*, 88 F. (2d) 90, 93, a claimant cannot rely entirely on a course

of business whereby an interest in a car is acquired without taking care to ascertain who the real owner is. The court below in the instant case admitted that the language of the statute is open to the interpretation here contended for, but it declined to follow such construction. It said (R. 28):

> The involved language of sub-section (b) (3) of the act does permit the possible interpretation that the lienor is charged with the duty of making inquiry as to every one, bearing a bad reputation or record, who may have a right under the contract of sale, whether or not it appears on the face of the instrument. See *Federal Motor Finance* v. *United States*, 88 F. (2d) 90. But in our view Congress did not intend to impose upon the lienor the obligation to ascertain at his peril the identity of every person having an interest in the property and to make inquiry of the law enforcement officers as to the previous record and reputation of every such person, unless from the documents themselves or other surrounding circumstances the lienor possesses information which would lead a reasonably prudent and law abiding person to make a further investigation.

(2) The decision in the instant case is in direct conflict with the decision of the Circuit Court of Appeals for the Eighth Circuit in *Federal Motor Finance* v. *United States*, 88 F. (2d) 90, *supra*, as is indicated by the citation of that case in the passage just quoted from the opinion below.

In the *Federal Motor Finance* case, *supra,* the facts were strikingly similar to those in the instant case. A car was sold by an agent of a dealer to one Tayson, a bootlegger. The note and conditional sales contract were executed in the name of one Canfield, who bore a good reputation, and were assumed by the finance company without knowledge of the fraud. The company investigated Canfield, but it did not investigate Tayson because it had no information that he was the purchaser. It made no inquiry as to whether any person other than Canfield was interested in the transaction. The District Court for the Southern District of Iowa denied remission of the forfeiture (13 F. Supp. 619). On appeal the appellant finance company contended that the trial court erred in holding that Tayson was the real purchaser of the car and in concluding that the claimant's interest arose out of or was subject to a contract or agreement with him. It claimed that the law violator Tayson acquired no rights to the car under the contract, and that the statute does not require a claimant to make inquiry of enforcement officers concerning the reputation of a person unless the claimant knows or should have known that such person had some right to or interest in the car. In affirming the order of the District Court the Circuit Court of Appeals (p. 93) quoted the following language from the opinion of

Judge Peters in *United States* v. *One 1935 Chevrolet Coupe*, 13 F. Supp. 986, 988 (Me.):

> "When it develops, after a seizure and forfeiture such as this, that the sale was actually made to the lawbreaker who caused the forfeiture, and not to the person whose name appears in the contract, the court will disregard the fiction and decide the case on the basis of the true facts."

The court then continued (88 F. (2d) at 93–94):

> The true facts in this case are that the confiscated car was sold and delivered by the agent of Harter Motors, Inc., to the liquor law violator Tayson and the defrauding of the revenue laws followed. The liquor law violator, and not the straw man Canfield, acquired the car. The lien of the appellant is good because Tayson is estopped to deny its validity and not because Canfield ever had any claim upon the car in fact or in law.
>
> On study of the wording of subdivision (b) (3) of 27 U. S. C. A. § 40a, we do not agree with the contention of the appellant that the intent of Congress was to relieve the finance company from all inquiry as to the true ownership of the car at the time it acquired its lien thereon, or to save such an interest as the finance company acquired from confiscation under the facts shown. We think the fair intendment of the language of subsection (3) concerning remission of forfeiture is that the appellant could not rely entirely upon a course of business whereby it acquired an interest in the car so

nearly approximating the total value thereof without taking care to ascertain who the real owner was in possession of and using the car. We agree with the statement by Judge Peters:

> "I see no evidence of any intention on the part of Congress to enlarge the number of opportunities for defrauding the revenue. Quite the contrary. To mitigate the result of this forfeiture would be to inform dealers that by using straw men on contracts dealers can safely sell cars to bootleggers and avoid subsequent forfeiture by turning over the contracts to innocent third parties. That is an avenue for fraud that should not be opened. The finance companies can easily take precautions against fictitious sales, and the few dealers who would be inclined to such practices will be checked."

The conflict between the *Federal Motor Finance* case, *supra,* and the instant case is not rendered any the less definite by reason of the statement in the opinion below that the District Court in its discretion might have denied remission of forfeiture even under the construction of the statute adopted by the court below (R. 28). The decisions in the *Federal Motor Finance* case, as the opinions therein clearly disclose, were based on the ground that no power to remit existed under the statute in the similar circumstances there presented; and that therefore there was no room for the exercise of discretion on the part of the District Court. The District Court in that case did not purport to

exercise discretion in denying remission. It concluded (13 F. Supp. 620):

> (5) That the court cannot allow the claim of the intervener, as it has failed to show the conditions precedent to remission or mitigation of a decree of forfeiture under the provisions of the Act of August 27, 1935, § 204, being section 40a, tit. 27, U. S. Code (27 U. S. C. A. § 40a).

The affirmance by the Circuit Court of Appeals in that case was similarly, and necessarily, predicated on the view that the District Court was without power to exercise discretion in determining whether the claimant there was entitled to remission of forfeiture.

(3) The court below has erroneously decided an important question of Federal law which has not been, but should be, settled by this Court. The question here involved is now pending before a number of the lower courts and an authoritative decision by this Court is necessary for their guidance. A proper construction of the statute is of importance to the Government in preventing frauds upon the revenue. If the decision remitting the forfeiture in the instant case is permitted to stand it will furnish proposed violators of the law with a simple formula for easily obtaining one of the instrumentalities of their trade and greatly add to the difficulties of enforcing the internal revenue laws.

CONCLUSION

The decision of the court below should not be permitted to stand without review by this Court. It is in direct conflict with the decision of the Circuit Court of Appeals for the Eighth Circuit, and erroneously determines an important question of Federal law which has not been, but should be, settled by this Court. It is respectfully submitted that the petition for writ of certiorari should be granted.

GOLDEN W. BELL,
Acting Solicitor General.

FEBRUARY 1938.

APPENDIX

Sections 204 (a) and (b), Title II, of the Liquor Law Repeal and Enforcement Act of August 27, 1935, c. 740, 49 Stat. 872, 878 (U. S. C. Sup. II, Title 27, Sec. 40a), provides:

> (a) *Jurisdiction of court.* Whenever, in any proceeding in court for the forfeiture, under the internal-revenue laws, of any vehicle or aircraft seized for a violation of the internal-revenue laws relating to liquors, such forfeiture is decreed, the court shall have exclusive jurisdiction to remit or mitigate the forfeiture.
>
> (b) *Conditions precedent to remission or mitigation.* In any such proceeding the court shall not allow the claim of any claimant for remission or mitigation unless and until he proves (1) that he has an interest in such vehicle or aircraft, as owner or otherwise, which he acquired in good faith, (2) that he had at no time any knowledge or reason to believe that it was being or would be used in the violation of laws of the United States or of any State relating to liquor, and (3) if it appears that the interest asserted by the claimant arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating laws of the United States or of any State relating to liquor has a right with respect to such vehicle or aircraft, that, before such claimant acquired his interest, or such other person acquired his right under such contract or agreement, whichever occurred later, the claimant, his officer or

agent, was informed in answer to his inquiry, at the headquarters of the sheriff, chief of police, principal Federal internal-revenue officer engaged in the enforcement of the liquor laws, or other principal local or Federal law-enforcement officer of the locality in which such other person acquired his right under such contract or agreement, of the locality in which such other person then resided, and of each locality in which the claimant has made any other inquiry as to the character or financial standing of such other person, that such other person had no such record or reputation.

U. S. GOVERNMENT PRINTING OFFICE: 1930

FILE COPY

No. 10

In the Supreme Court of the United States

OCTOBER TERM, 1938

THE UNITED STATES OF AMERICA, PETITIONER

v.

ONE 1936 MODEL FORD V-8 DE LUXE COACH, MOTOR No. 18-3306511, COMMERCIAL CREDIT COMPANY, CLAIMANT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES

INDEX

CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 10

THE UNITED STATES OF AMERICA, PETITIONER

v.

ONE 1936 MODEL FORD V–8 DE LUXE COACH, MOTOR NO. 18–3306511, COMMERCIAL CREDIT COMPANY, CLAIMANT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the District Court (R. 5–13) is reported in 19 F. Supp. 470. The opinion of the Circuit Court of Appeals (R. 26–28) is reported in 93 F. (2d) 771.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered January 4, 1938 (R. 29). The petition for writ of certiorari was filed February 25, 1938, and was granted April 4, 1938 (R. 31). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the claimant sufficiently complied with the provisions of Section 204 (b), Title II, of the Liquor Law Repeal and Enforcement Act of August 27, 1935, c. 740, 49 Stat. 872, 878, to entitle it to a remission of the forfeiture of an automobile seized and forfeited under the internal revenue laws.

STATUTE INVOLVED

Section 204 (a) and (b), Title II, of the Liquor Law Repeal and Enforcement Act of August 27, 1935, c. 740, 49 Stat. 872, 878 (U. S. C., Supp. III, Title 27, Sec. 40a), provides:

> (a) *Jurisdiction of court.*—Whenever, in any proceeding in court for the forfeiture, under the internal-revenue laws, of any vehicle or aircraft seized for a violation of the internal-revenue laws relating to liquors, such forfeiture is decreed, the court shall have exclusive jurisdiction to remit or mitigate the forfeiture.
>
> (b) *Conditions precedent to remission or mitigation.*—In any such proceeding the court shall not allow the claim of any claimant for remission or mitigation unless and until he proves (1) that he has an interest in such vehicle or aircraft, as owner or otherwise, which he acquired in good faith, (2) that he had at no time any knowledge or reason to believe that it was being or would be used in the violation of laws of the United States or of any State relating to liquor, and (3) if it appears that the interest asserted by

the claimant arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating laws of the United States or of any State relating to liquor has a right with respect to such vehicle or aircraft, that, before such claimant acquired his interest, or such other person acquired his right under such contract or agreement, whichever occurred later, the claimant, his officer or agent, was informed in answer to his inquiry, at the headquarters of the sheriff, chief of police, principal Federal internal-revenue officer engaged in the enforcement of the liquor laws, or other principal local or Federal law-enforcement officer of the locality in which such other person acquired his right under such contract or agreement, of the locality in which such other person then resided, and of each locality in which the claimant has made any other inquiry as to the character or financial standing of such other person, that such other person had no such record or reputation.

STATEMENT

The facts are not in dispute.

The automobile here involved was seized on December 3, 1936, by Federal officers from one Benjamin Guy Walker while it was being used by him in the unlawful transportation of distilled spirits upon which the tax had not been paid. He pleaded guilty to an indictment for such violation of the internal revenue laws in the United States District

Court for the Western District of South Carolina (R. 5).

A libel was filed in the above District Court for the forfeiture of the automobile under Section 3450, Revised Statutes (U. S. C., Title 26, Sec. 1441). The Commercial Credit Company, assignee of a conditional sales contract covering the automobile, intervened and made return to the libel, admitted the material allegations thereof, and prayed for a remission of the forfeiture under Section 204 of the Liquor Law Repeal and Enforcement Act (R. 2–4, 5). Trial was to the court (R. 5) and in its opinion (R. 5–7; see also R. 18 *et seq.*) it found the facts substantially as follows:

The automobile was sold by the Greenville Auto Sales, Inc., on October 3, 1936, through its agent, to Benjamin Guy Walker, who in part payment of the purchase price turned in a used car which had been paid for by him but which was registered in his wife's name. He was given terms for the payment of the purchase price under a conditional sales contract but the contract, which was drawn by an agent of the dealer, was made out in the name of and signed by his brother, Landrum P. Walker. Benjamin Walker and his wife had domestic difficulties at the time and the contract was drawn and executed in the name of his brother in order to place the title of the automobile "where his wife could not reach it." Landrum Walker had no interest in the transaction except to comply with the

request of his brother. The transaction was made by Benjamin Walker with the dealer through its agent. Benjamin Walker selected the car, made the agreement and handled the transaction himself. Landrum Walker drove the car away from the dealer's place of business. Benjamin Walker at the time, and for two or three weeks thereafter, was living at the home of his brother, Landrum Walker. Only one payment was made on the contract before the seizure and that was made by Benjamin Walker to the dealer.

It was admitted by all the parties that Benjamin Walker had a previous record and reputation for violating both state and Federal liquor laws. His brother, Landrum Walker, was convicted of violating the National Prohibition Act in 1929, but since then his record and reputation had been good.

On the date the sale was consummated the dealer submitted the contract to the claimant, the Commercial Credit Company, which accepted by telephone, and subsequently, on October 5, in the usual course of business, the dealer assigned the contract to the claimant and received a check for the same. Before accepting the assignment of the contract the claimant made an investigation of Landrum Walker by inquiring at the headquarters of the sheriff of Greenville County, South Carolina, and at the headquarters of the chief of police of the City of Greenville, the county and city where the interest was acquired and Landrum Walker re-

sided, as to his record and reputation for violating the liquor laws. The information received was that Landrum Walker had no such record or reputation, but that Benjamin Walker had both a record and reputation for violating state and Federal laws relating to liquor. No inquiry or investigation whatsoever was made as to Benjamin Walker, the admitted real owner and purchaser of the automobile.

The District Court ordered the car forfeited, but granted the claimant a remission of the forfeiture because of a recent decision by the Circuit Court of Appeals for its circuit in the case of *C. I. T. Corp.* v. *United States*, 89 F. (2d) 977 (R. 9–11). In that case it was held, under a state of facts similar to that in the instant case, that the three statutory conditions contained in Section 204 (b) of the Liquor Law Repeal and Enforcement Act had been complied with and that, while compliance with these conditions did not deprive a District Court of discretionary power to deny a remission, the facts involved did not furnish sufficient reason for a refusal to grant relief.

Upon appeal by the United States to the Circuit Court of Appeals for the Fourth Circuit the judgment of the District Court was affirmed (R. 29). The appellate court held that subsections (b) (1) and (2) of the statute had been complied with because the claimant had acquired its interest in the vehicle in good faith and had neither knowledge nor reason to believe that the vehicle would be il-

legally used, since there was nothing before the claimant to show that Landrum Walker was not the real purchaser (R. 27).[1] As to subsection (b) (3) it held that this provision of the statute had been complied with when the claimant investigated Landrum Walker, the fictitious or straw purchaser, because the statute did not require a lienor to ascertain at his peril the identity of every person having an interest in the property and to make inquiry of the designated law enforcement officers as to every such person's previous record or reputation, unless from the documents themselves or other surrounding circumstances the lienor possessed information which would lead a reasonably prudent and law-abiding person to make a further investigation (R. 28).[2] In conclusion, the court

---

[1] In this connection the Circuit Court of Appeals also alluded to the fact that claimant had no knowledge that Landrum Walker, the nominal purchaser, "seven years before [the purchase of the car] had violated the National Prohibition Act" (R. 27). We make no point of Landrum Walker's conviction of violating the National Prohibition Act because of the length of time which had elapsed between the conviction and the purchase of the car, because there is nothing in the record to indicate that he was a persistent violator of the liquor laws or that he was convicted more than once, and because the inquiry made by the claimant of the local law enforcement officers did not disclose that Landrum Walker had a record or reputation for violating the liquor laws.

[2] The Circuit Court of Appeals also held that there was no merit in the contention made by the Government in that court that subsection (b) (3) of the statute was not complied with because inquiry was made by the claimant only

held that the case did not present any facts which would have justified the District Court, in the exercise of discretion, in refusing a remission of the forfeiture (R. 28).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

(1) In holding that the claimant had no reason to believe that the automobile would be illegally used, as that language is employed in subsection (b) (2) of the statute.

(2) In holding that subsection (b) (3) had been sufficiently complied with by the claimant's investigation of the fictitious or straw purchaser.

(3) In holding that the claimant was not required under subsection (b) (3) to investigate the real purchaser.

(4) In failing to hold that it was incumbent upon the claimant to make a reasonable effort to ascertain the identity of the real purchaser so that his previous record and reputation could be investigated in accordance with subsection (b) (3).

(5) In not reversing the judgment of the District Court.

SUMMARY OF ARGUMENT

The forfeiture should not have been remitted in this case, because the conditions prescribed by the

---

of the local enforcement officers and not of the Federal officers. We do not urge this contention in this Court since we are in accord with the view of the Circuit Court of Appeals that the statute is satisfied if inquiry is made of any of the officers named therein (See *United States* v. *One 1935 Dodge Rack-Body Truck, etc.*, 88 F. (2d) 613 (C. C. A. 2d).

statute which must be complied with before the court has jurisdiction to remit a forfeiture were not met by the claimant. One of these conditions is that the claimant must prove that it had no "reason to believe" that the car on which it was about to acquire a lien would be illegally used. Claimant investigated the reputation of the fictitious purchaser, but it made no effort to ascertain whether he was the actual purchaser and user of the car or whether some one else had an interest in the transaction. With knowledge that automobiles are frequently used in violating the liquor laws the claimant should not be heard to say that it had no reason to believe, within the meaning of the statute, that the car would be so used, when it neglected to use ordinary diligence in discovering the true facts surrounding the purchase.

The claimant's interest arose out of a contract between a dealer and a bootlegger. While the contract was signed by a nominal purchaser, the real party in interest and the person having the right to the vehicle was the bootlegger. In such a case the statute specifically provides that the person having a right to the vehicle shall be investigated. Even, however, if the fictitious character of the transaction be disregarded and the claimant's interest may be considered as having arisen out of the contract between the dealer and the person whose name was appended to the conditional sales contract as purchaser, the claimant was required to investigate the real purchaser, since its interest was "subject to [an] agreement" whereby a person

having a reputation as a liquor law violator had a right with respect to the vehicle. Claimant investigated only the nominal purchaser. We submit that under the language of the statute the claimant is required to investigate the real purchaser at its peril and that if it fails to do so, as between it and the Government, the claimant assumes the risk of fraud perpetrated upon it by the dealer and the bootlegger.

In any event, the claimant should have been required to show that it at least made a reasonable effort to ascertain who the real purchaser and user of the car was so that he could be investigated as required by the statute. Otherwise, the revenue laws will be easily evaded by straw purchaser transactions such as this, and it was not the intent of the remission statute to enlarge the opportunities to defraud the revenue.

Since the prerequisites of the statute were not complied with, there was no room for the exercise of discretion as to the remission of the forfeiture in this case, with the result that the judgment of the court below should be reversed.

ARGUMENT

I

THE COURT ERRED IN HOLDING THAT CONDITION (2) OF THE STATUTE HAD BEEN COMPLIED WITH ON THE GROUND THAT THE CLAIMANT HAD NO REASON TO BELIEVE THAT THE CAR WOULD BE ILLEGALLY USED

Section 204 (a) gives the District Court exclusive jurisdiction to remit or mitigate the forfeiture

of an automobile where a forfeiture is decreed under the internal revenue laws. Section 204 (b) expressly provides, however, that the court is not permitted to allow a claim for remission or mitigation of the forfeiture unless the claimant proves,

(1) That he has an interest in the vehicle which he acquired in good faith;

(2) That he had at no time any knowledge or reason to believe that the vehicle was or would be used in violating the liquor laws; and

(3) If it appears that the claimant's interest "arises out of or is in any way subject to any contract or agreement" under which any person having a record or reputation for violating state or Federal liquor laws has a right with respect to the vehicle, then the claimant must also show that, before he acquired his interest in the vehicle, he made inquiries of certain designated state or Federal law enforcement officers with respect to the aforesaid person's record or reputation for violating the liquor laws and was informed that he had no such record or reputation.

It is conceded that condition (1) was complied with because the claimant had an interest in the vehicle and because it acquired such interest in good faith, in that it was not a party to the transaction between the dealer's agent and the bootlegger. *Arguendo,* it may also be admitted with respect to condition (2) that the claimant had no "knowledge" that the vehicle would be illegally used.

The court, however, went furt and held that condition (2) was fully complied with because the claimant also had no "reason to believe" that the car would be so used, since there was nothing before the claimant to show that Landrum Walker, the fictitious purchaser, was not the real purchaser of the car. In so holding we think the court gave too narrow a construction to the statute. "Reason to believe" is not synonymous with "suspicion," as would seem to be the view of the court below (R. 27). The claimant may have had no reason to believe the existence of the true facts either because nothing came to its notice or because it was satisfied with a limited inquiry, but this, we submit, does not satisfy the statute. The claimant could not close its eyes to an obvious risk and then claim that it had no reason to believe that there was such a risk. Persons dealing in automobiles and in automobile finance paper do so with full knowledge that automobiles are frequently used in violating the law. They are chargeable with knowledge that the courts have uniformly held that automobiles are especially adapted to violating the liquor laws. In *Goldsmith-Grant Co.* v. *United States,* 254 U. S. 505, 513, it was said:

> If we should regard simply the adaptability of a particular form of property to an illegal purpose, we should have to ascribe facility to an automobile as an aid to the violation of the law. It is a "thing" that

can be used in the removal of "goods and commodities" and the law is explicit in its condemnation of such things.

The greatest risk of persons having an interest in automobile finance paper is the danger of seizure of the automobile for violation of such laws. Claimant must have known from experience that the very device by which it was deceived in this case is frequently employed by bootleggers in purchasing automobiles. Yet in the light of this knowledge and this experience it was satisfied to rely on the information in the documents before it and on the limited investigation made of the fictitious purchaser. It made no effort to ascertain what the true facts surrounding the transaction were. Persons injured by negligently handling loaded guns often have no reason to believe that they will explode simply because they have not examined them. There is very little doubt that the claimant could have ascertained the true facts, and it is certain that it made no effort to find out who the real owner was or whether the interest it was about to buy arose out of or was in any way subject to a contract or agreement under which a reputed liquor violator had a right with respect to the vehicle. It could readily have inquired of Landrum Walker, whose paper it had before it, whether some one else was interested in the transaction, and it could have inquired of the vendor, with whom it dealt and from whom it acquired the conditional sales con-

tract, whether the person signing the contract was the real purchaser and user of the car. If either or both of these inquiries had been made the claimant would doubtless have discovered that the automobile in which it was about to buy a substantial interest was not being acquired and used by Landrum Walker, the supposed owner, but by Benjamin Walker, the true owner and a violator of both Federal and state liquor laws. The claimant was able to remain in its favored state of ignorance only because it refrained from seeking knowledge.

We submit that a claimant may not be heard to say that it had no reason to believe a thing, within the meaning of the statute, when it has neglected to use ordinary diligence to discover the true facts bearing on a situation or transaction, and, therefore, that the holding of the court below that this part of the statute had been sufficiently complied with was erroneous.

Respondent refers in its memorandum in opposition to certiorari to the burden which would be imposed upon automobile finance companies, in view of the magnitude of their transactions, if the Government's contention were sustained. While it is true that the burden may be a heavy one, the finance company is in the position of seeking, in effect, a retransfer to it of property the title to which has been forfeited to the Government for a violation of law. A finance company may, of course, choose to rely either upon no investigation

or a casual investigation of those purchasers of cars whose paper it assumes, but when it comes into court and seeks the return, under a remission statute, of property which has theretofore been forfeited to the Government, it should not be heard to say that a condition to the remission of forfeiture has been fulfilled where its investigation has been so casual and limited that it is not in a position to entertain a belief that the car would or would not be used in violating the liquor laws.

II

THE COURT ERRED IN FAILING TO HOLD THAT UNDER CONDITION (3) OF THE STATUTE THE CLAIMANT WAS REQUIRED TO INVESTIGATE THE REAL PURCHASER AT ITS PERIL

Subsection (b) (3) provides that if it appears that the claimant's interest arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating Federal or state liquor laws has a right to the vehicle, then the claimant is required to show, in order to be entitled to a remission of the forfeiture, that before it acquired such interest it made certain inquiries of the law enforcement agencies designated in the statute and was informed that the aforesaid person had no such record or reputation.

The court below held that the claimant was not required to investigate the real purchaser and user of the car because there was nothing before the

claimant to show that Landrum Walker, the fictitious or straw purchaser, was not the real owner of the car. The statute specifically provides, however, that where the interest of the claimant "arises out of" a contract or agreement under which any person having a record or reputation for violating the liquor laws has a "right with respect to [the] vehicle," such person shall be investigated. While it is true that the written contract in this case purported on its face to be between the dealer and a person without a reputation as a liquor law violator, the claimant's interest, in reality, arose out of a contract between the dealer and a bootlegger. The bootlegger was the real purchaser under the contract and the only person who, in fact, had a right to the vehicle. He, himself, handled the transaction with the dealer's agent, selected the car and made the agreement for its purchase. He turned in a used car in part payment and made the only cash payment on the vehicle that was made. The nominal purchaser had no real right to the vehicle or interest in the transaction whatsoever. He simply signed the conditional sales contract at the request of the real purchaser of the car. In such a case the fictitious transaction should, we submit, be disregarded and the case decided on the basis of the true facts. See *Federal Motor Finance* v. *United States,* 88 F. (2d) 90, 93 (C. C. A. 8th), where the court quoted the following language from the decision in *United States* v. *One 1935 Chevrolet Coupe,* 13 F. Supp. 986, 988 (Me.):

> The pivotal feature of this case is the fact that the signer of the contract was a straw man, the actual purchaser being a well-known violator of the liquor laws who intended to use the car (as he did) in his illicit business, and that this was known to the dealer who sold the car to the bootlegger and the contract to the finance company.
>
> * * * * *
>
> When it develops, after a seizure and forfeiture such as this, that the sale was actually made to the lawbreaker who caused the forfeiture, and not to the person whose name appears in the contract, the court will disregard the fiction and decide the case on the basis of the true facts.

In its memorandum in opposition to the petition for certiorari the claimant contended that the contract referred to in the statute is the contract signed by Landrum Walker, the nominal purchaser; that this was the contract assumed by the claimant and out of which its interest arose, and that the nominal purchaser, whose name appeared in the contract, was the only one to be investigated. But even such a technical attempt at construction, which disregards the fictitious nature of the transaction, does not avail the claimant. The further question remains whether the claimant's interest "is *in any way subject to* any contract or agreement under which any person having a record or reputation" for violating the liquor laws "has a right with respect to [the] vehicle." [Italics ours.] Here the facts clearly show that the claimant's interest

was "subject to [an] agreement" whereby Benjamin Walker, the bootlegger, had "a right with respect to the vehicle." All of the parties to the transaction, the dealer's agent, the bootlegger, and his brother, recognized and understood that the brother's name was appended to the contract merely as an accommodation to the bootlegger and that the bootlegger was the real purchaser of the car and the one who would use and pay for it. It is therefore evident that even under the respondent's theory it was required, in order to meet the terms of the statute, to investigate the record or reputation of Benjamin Walker, the real purchaser of the car.

There is nothing in the statute which relieves the claimant from the investigation there commanded merely because the claimant may not know of the straw nature of the transaction. The statute contemplates, in a situation such as is here presented, the investigation of the real party in interest. Such an investigation is a condition precedent to the retransfer to the claimant of property which has been forfeited to the Government. The statute is not at all concerned with the manner in which the claimant shall ascertain the identity of the real party in interest in straw purchaser transactions, but merely with the fact that the claimant shall have investigated the record or reputation of such party for violating the liquor laws before it may obtain the return of the forfeited property.

To hold, as did the court below, that the claimant

was required to investigate only the fictitious purchaser would lead to easy evasion of the statute and the internal revenue laws. An investigation of the fictitious purchaser seldom, if ever, discloses anything against him. This was true in the instant case. The very purpose of straw purchaser transactions usually is to avoid an investigation of the real parties in interest. Bootleggers and dealers are cautious to use the names of fictitious persons or straw men with good reputations who will bear investigating, in order to avoid the difficulty of securing the financing of cars purchased on the installment plan.

While the purpose of the statute was to relieve against hardship in certain cases, its proper construction involves not alone the interest of the lienor but the broad interest of the Government in its effort to collect the revenue and to break up the illicit liquor traffic. We submit that under the language of the statute the claimant is required to investigate the real purchaser at its peril and that, if it fails to do so, the claimant, as between it and the Government, assumes the risk of fraud perpetrated upon it by the dealer and the bootlegger.

Although the court below refused to follow the construction of the statute just urged, it admitted that such an interpretation was a possible one and also, by inference, that it was supported by the decision of the Circuit Court of Appeals for the Eighth Circuit in *Federal Motor Finance* v. *United States*, 88 F. (2d) 90, *supra* (R. 28).

The facts in the *Federal Motor Finance* case are strikingly similar to those in the instant case. A car was sold by an agent of a dealer to one Tayson, a bootlegger. The note and conditional sales contract were executed for the accommodation of the bootlegger in the name of one Canfield, who bore a good reputation, and were assumed by the finance company without knowledge of the fraud. The company investigated Canfield, but it did not investigate Tayson because it had no information that he was the purchaser. It made no inquiry as to whether any person other than Canfield was interested in the transaction. The District Court for the Southern District of Iowa denied remission of the forfeiture (13 F. Supp. 619). On appeal the appellant finance company contended that the trial court erred in holding that Tayson was the real purchaser of the car and in concluding that the claimant's interest arose out of or was subject to a contract or agreement with him. It claimed that the law violator Tayson acquired no rights to the car under the contract, and that the statute does not require a claimant to make inquiry of enforcement officers concerning the reputation of a person unless the claimant knows or should have known that such person had some right to or interest in the car. In affirming the order of the District Court, the Circuit Court of Appeals (p. 93) quoted the language from the opinion of Judge Peters in *United States* v. *One 1935 Chevrolet Coupe*, which we have al-

ready quoted (*supra*, pp. 16–17), and then continued (88 F. (2d) at pp. 93–94):

> The true facts in this case are that the confiscated car was sold and delivered by the agent of Harter Motors, Inc., to the liquor law violator Tayson and the defrauding of the revenue laws followed. The liquor law violator, and not the straw man, Canfield, acquired the car. The lien of the appellant is good because Tayson is estopped to deny its validity and not because Canfield ever had any claim upon the car in fact or in law.
>
> On study of the wording of subdivision (b) (3) of 27 U. S. C. A. sec. 40a, we do not agree with the contention of the appellant that the intent of Congress was to relieve the finance company from all inquiry as to the true ownership of the car at the time it acquired its lien thereon, or to save such an interest as the finance company acquired from confiscation under the facts shown. We think the fair intendment of the language of subsection (3) concerning remission of forfeiture is that the appellant could not rely entirely upon a course of business whereby it acquired an interest in the car so nearly approximating the total value thereof without taking care to ascertain who the real owner was in possession of and using the car. We agree with the statement by Judge Peters:
>
> "I see no evidence of any intention on the part of Congress to enlarge the number of opportunities for defrauding the revenue.

> Quite the contrary. To mitigate the result of this forfeiture would be to inform dealers that by using straw men on contracts dealers can safely sell cars to bootleggers and avoid subsequent forfeiture by turning over the contracts to innocent third parties. That is an avenue for fraud that should not be opened. The finance companies can easily take precautions against fictitious sales, and the few dealers who would be inclined to such practices will be checked."

Similarly, Judge Peters, in denying a remission of forfeiture in another straw purchaser case (*United States* v. *One 1935 Ford Coupe,* 17 F. Supp. 331), said (p. 333):

> Certainly to remit the forfeiture in this case would not only ratify a scheme to defraud the government, but would furnish proposed violators of the law with a simple formula for easily obtaining one of the instrumentalities of their trade.

III

THE COURT ERRED IN FAILING TO HOLD THAT THE CLAIMANT WAS IN ANY EVENT REQUIRED TO MAKE A REASONABLE EFFORT TO ASCERTAIN THE IDENTITY OF THE REAL PURCHASER SO THAT HE COULD BE INVESTIGATED AS REQUIRED BY SUBSECTION (B) (3)

If it be thought that the construction above contended for, that the claimant is required to investigate the real purchaser at its peril, places too strict a construction upon the statute and too great a

burden upon the claimant where a straw purchaser transaction is involved, then we submit that the claimant, before it can assert compliance with the statute, should at least be required to make a reasonable effort to ascertain the identity of the real purchaser, so that he may be investigated as contemplated by the statute.

The remission statute was not intended to enlarge the opportunities to defraud the revenue. Except for the statute in question the claimant would have no standing in court. For many years innocent interests forfeited under the internal revenue laws were not saved. *Goldsmith-Grant Co.* v. *United States,* 254 U. S. 505, and *United States* v. *One Ford Coupe,* 272 U. S. 321, 325. The Secretary of the Treasury had discretionary power to remit forfeitures in such cases under certain conditions (U. S. C., Title 26, Sec. 1626; Title 19, Sec. 1618) and later the Attorney General was given the same power under Section 5 of Executive Order No. 6166 (U. S. C., Title 5, Sec. 132) in cases referred to him for prosecution. But it was not until the enactment of the present statute in 1935 that the court was given jurisdiction to remit forfeitures under the internal revenue laws, and then only when certain conditions set forth in the statute were complied with. Its jurisdiction was limited and circumscribed. The history, purpose, and effect of the statute are fully discussed in an opin-

ion by Judge Paul, of the United States District Court for the Western District of Virginia, in *United States* v. *One Ford Coach,* 20 F. Supp. 44. The opinion also refers to the growing practice of bootleggers and dealers using straw purchasers to defeat the revenue laws. It, moreover, points out that even though the claimant has complied with all the conditions of the statute, it is not entitled to a remission of the forfeiture unless it convinces the court that, in the exercise of its discretion, it should under all the circumstances be granted relief. While there is authority to the contrary (*Universal Credit Co.* v. *United States,* 91 F. (2d) 388, 390 (C. C. A. 6th)), this interpretation of the statute, which seems to us to be the correct one, is supported by the decision of the court below in the instant case (R. 28) and in *C. I. T. Corp.* v. *United States, supra,* and by the decision of the Circuit Court of Appeals for the Second Circuit in *United States* v. *One 1935 Dodge Rack Body Truck,* 88 F. (2d) 613, *supra.* In the latter case it was said (p. 615):

> Although the statute under which this claim was made does not in terms require the court to remit or mitigate the forfeitures, it does give exclusive jurisdiction to do so, making the exercise of such jurisdiction subject to certain conditions precedent. While even if such conditions are fulfilled a claimant does not have the absolute right to remission or mitigation, he does have the right then to invoke the exercise of the court's dis-

> cretion. That discretion is a judicial one as distinguished from action merely arbitrary and capricious and so it is subject to review if, though only if, it has been abused.

As it is apparent that the statute was designed to protect only those claimants whose innocence is beyond doubt, we submit that before a claimant is entitled to assert that it has complied with the conditions of the statute it should be required to take reasonable precautions to prevent frauds upon the revenue. This could readily have been done in the instant case by the claimant inquiring of the fictitious purchaser and the dealer, both of whom were known to it, whether Landrum Walker was the real purchaser and user of the car. Particularly was this true with respect to the dealer, since it was from him that the claimant purchased its interest. These were reasonable precautions, and if followed the claimant would doubtlessly have been informed that the real purchaser was a bootlegger and it would have refrained from financing a car which was likely to be used in violating the law. It chose, however, not to take this precaution but to rely entirely upon an investigation based solely upon information contained in the documents before it. The court below has approved such a course of conduct by the claimant as a sufficient compliance with the statute. We submit, however, for the reason stated in the *Federal Motor Finance* case and the other cases to

which we have referred, that the effect of such a construction would be to open up an avenue for fraud upon the revenue which would defeat the aims of the statute.

While it is true that the court below interpreted the *Federal Motor Finance* decision as definitely holding that a claimant is required under the statute to ascertain at his peril the identity of the real owner of the vehicle (R. 28), that decision may be susceptible of the interpretation that what the court was intending to hold was merely that the claimant should take reasonable precautions to ascertain who the real owner is, so that the investigation contemplated by the statute might be made. In any event, such a construction of the statute is supported by the reasoning of the decision, regardless of which of the two interpretations thereof is the correct one.

The power given under the remission statute should, of course, be reasonably exercised so as to relieve entirely innocent claimants and owners against harsh condemnations of their property, but it should not be so loosely exercised as to give encouragement to violators of the revenue laws. To relieve against forfeitures in cases such as this would give automobile dealers an opportunity to cooperate with their bootlegging customers in the evasion of the forfeiture statute, so long as they transferred the lien on the

car to a finance company. The finance company would run no risk, and the plan would be crowned with success, so long as the company was not required to seek knowledge of the true facts surrounding the purchase.

As pointed out in cases heretofore cited, finance companies are not in an entirely helpless position. They may take precautions against fictitious sales by accepting contracts with recourse against the dealer or upon such other terms as they may fix for their protection, or they may possibly recoup their loss by actions in the nature of deceit.

In its memorandum in opposition to the petition for certiorari the claimant argued that the court below rightly approved the exercise of judicial discretion by the District Court and since, as that court held, there was no abuse of discretion, the decision should not be disturbed. We submit, however, that there was no room for the exercise of discretion in this case, because the conditions prescribed by the statute which must be complied with before the court has jurisdiction to exercise any discretion had not been met by the claimant. That these conditions must first be met is clearly pointed out in *United States* v. *One 1935 Dodge Rack-Body Truck, supra,* p. 24, and other cases. The decisions in the *Federal Motor Finance* case, *supra,* as the opinions therein clearly disclose, were based on the

ground that no power to remit existed under the statute in the similar circumstances there presented; and that therefore there was no room for the exercise of discretion on the part of the District Court. The District Court in that case did not purport to exercise discretion in denying remission. It concluded (13 F. Supp. 620):

> (5) That the court cannot allow the claim of the intervener, as it has failed to show the conditions precedent to remission or mitigation of a decree of forfeiture under the provisions of the Act of August 27, 1935, sec. 204, being section 40a, tit. 27, U. S. Code (27 U. S. C. A. sec. 40a).

The affirmance by the Circuit Court of Appeals in that case was similarly, and necessarily, predicated on the view that the District Court was without power to exercise discretion in determining whether the claimant there was entitled to remission of forfeiture.*

---

* While several District Courts, in denying remissions of forfeitures in straw purchaser cases, have rested their decisions upon the discretionary power of the court (*United States* v. *One 1935 Chevrolet Coupe*, *supra*; *United States* v. *One 1935 Ford Coupe*, *supra*; *United States* v. *One Ford Coach*, *supra*), we think that, under the facts in those cases, it should have been held that the conditions of the statute had not been complied with and that there was, therefore, no room for the exercise of discretion. In resting their decisions on a discretionary basis the courts in those cases found it unnecessary to give detailed consideration to the construction of the specific conditions of the statute which, we submit, must be complied with before it can be determined whether or not a remission shall be granted.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the Circuit Court of Appeals should be reversed.

ROBERT H. JACKSON,
Solicitor General.
BRIEN MCMAHON,
Assistant Attorney General.
MAHLON D. KIEFER,
W. MARVIN SMITH,
Attorneys.

SEPTEMBER 1938.

U. S. GOVERNMENT PRINTING OFFICE: 1938

FILE COPY

No. 10

In the Supreme Court of the United States

OCTOBER TERM, 1938

THE UNITED STATES OF AMERICA, PETITIONER

v.

ONE 1936 MODEL FORD V-8 DE LUXE COACH, MOTOR NO. 18-3305511, COMMERCIAL CREDIT COMPANY, CLAIMANT

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

SUPPLEMENTAL BRIEF FOR THE UNITED STATES ON REARGUMENT

INDEX

CITATIONS

140540—39——1

In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 10

THE UNITED STATES OF AMERICA, PETITIONER

v.

ONE 1936 MODEL FORD V–8 DE LUXE COACH, MOTOR NO. 18–3306511, COMMERCIAL CREDIT COMPANY, CLAIMANT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

SUPPLEMENTAL BRIEF FOR THE UNITED STATES ON REARGUMENT

This case is before the Court on the Government's petition for a reargument granted by the Court after argument of the case and a decision by this Court affirming the judgment of the court below by an equally divided Court.

The Government's petition for writ of certiorari to the Circuit Court of Appeals for the Fourth Circuit was granted April 4, 1938 (303 U. S. 633). After argument of the case this Court, on October 17, 1938, by a *per curiam* decision, affirmed the judgment of the Circuit Court of Appeals by an

equally divided Court (305 U. S. IV). Thereafter, the Government filed a petition with this Court for a rehearing before a full bench. On November 7, 1938, the petition was granted, the judgment of affirmance theretofore entered was vacated, and the case was restored to the docket for reargument (303 U. S. XXVII).

QUESTION PRESENTED

Whether the claimant sufficiently complied with the provisions of Section 204 (b), Title II, of the Liquor Law Repeal and Enforcement Act of August 27, 1935, c. 740, 49 Stat. 872, 878 (U. S. C., Supp. IV, Title 27, Sec. 40a), to entitle it to a remission of the forfeiture of an automobile seized and forfeited under the internal revenue laws.

STATUTE INVOLVED

The statute involved is set forth in the Government's brief on the original argument, pp. 2–3.

ARGUMENT

The general question in this case is the extent of the investigation which automobile finance companies purchasing conditional sales contracts are required to make under Section 204 (b), Title II, of the Liquor Law Repeal and Enforcement Act, where straw purchaser transactions are involved, as a condition precedent to allowance of claims for the remission of forfeitures. The statute sets forth three conditions which must be complied with

by the claimant before the court acquires jurisdiction to remit a forfeiture. The court below held that conditions (1) and (2) had been complied with in this case because the claimant had acquired its interest in the vehicle in good faith and had neither knowledge nor reason to believe that the vehicle would be illegally used, since there was nothing before the claimant to show that Landrum Walker, whose paper it had before it, was not the real purchaser. As to condition (3), the court held that this condition had been complied with when the claimant investigated Landrum Walker, the fictitious or straw purchaser, because the statute did not require a lienor to ascertain at his peril the identity of every person having an interest in the property and to make inquiry of the designated law enforcement officers as to every such person's previous record or reputation, unless from the documents themselves or other surrounding circumstances the lienor possessed information which would lead a reasonably prudent and law-abiding person to make a further investigation. The court also held that the case did not present any facts which would have justified the District Court, in the exercise of discretion, in refusing a remission of the forfeiture (R. 27–28).

In its brief on the original argument the Government conceded that condition (1) was complied with because the claimant had an interest in the vehicle and because it acquired its interest in [illegible]od faith, in that it was not a party to the transaction

between the dealer's agent and the bootlegger. It also admitted, *arguendo,* with respect to condition (2) that the claimant had no "knowledge" that the vehicle would be illegally used,[1] but with further respect to condition (2) it contended that the claimant should not be heard to say that it had no "reason to believe" that the vehicle would be so used when it made no effort to ascertain what the true facts and circumstances surrounding the transaction were and whether Landrum Walker was the real purchaser or whether some one else with a bootleg reputation was interested in the transaction. This information, it was pointed out, the claimant could doubtless have obtained by inquiry of Landrum Walker, whose paper it had before it, or of the vendor, with whom it dealt and from whom it obtained the conditional sales contract. As to condition (3) the Government contended that under the language of the statute the claimant was required to investigate the real purchaser at its peril and that, since it failed to do so, the claimant, as between it and the Government, assumed the risk of fraud perpetrated upon it by the dealer and the bootlegger. It was further urged with respect to condition (3) that in any event, before the claimant was permitted to assert

[1] This *arguendo* concession was based upon the premise that the claimant did not have actual knowledge that the car would be illegally used. That there is a basis for an argument that it had implied knowledge, see discussion at pp. 10–13, *infra.*

compliance with the statute, it should at least have been required to show that it made a reasonable effort to ascertain the identity of the real purchaser by inquiring of the fictitious purchaser and the dealer, both of whom were known to it, so that the real purchaser could be investigated as contemplated by the statute. Lastly, it was urged that since the conditions prescribed by the statute had not been complied with by the claimant there was no room for the exercise of discretion by the District Court in remitting the forfeiture. The decision of the Circuit Court of Appeals for the Eighth Circuit in *Federal Motor Finance* v. *United States,* 88 F. (2d) 90, was especially relied upon in support of the Government's contentions.

After argument of the case before this Court the Circuit Court of Appeals for the Fifth Circuit handed down its decision in *United States* v. *Automobile Financing, Inc.*; 99 F. (2d) 498, in which the facts were similar to those in the instant case. One McFarland, a bootlegger, purchased a car from an automobile salesman. The note and conditional sales contract were executed by one Jenkins, who had a good reputation, and were assigned to the finance company, who had no knowledge of the fraud. The car was seized while being used by McFarland in violating the internal revenue laws and its forfeiture followed in the United States District Court for the Northern District of Georgia. The finance company applied to the court for a remission of the forfeiture under the

Liquor Law Repeal and Enforcement Act and its petition was granted (22 F. Supp. 507). On appeal to the Circuit Court of Appeals for the Fifth Circuit the Government contended that in cases of this kind, where the real purchaser with a record procures another to appear as purchaser, the ostensible purchaser must be disregarded; that where, as in the case before the court, no inquiry was made regarding the real purchaser, the statutory conditions precedent were not met; and that the spirit and purpose of the statute, as well as its literal terms, required that the remission be denied. In affirming the judgment of the District Court the court conceded, as did the Circuit Court of Appeals for the Fourth Circuit in the instant case, that condition (3) of the statute was capable of the construction contended for by the Government, citing the *Federal Motor Finance* case, *supra,* but agreed with the view of the Circuit Court of Appeals in the instant case that " 'Congress did not intend to impose upon the lienor the obligation to ascertain at his peril' the existence of secret or covered [sic] interests, 'unless, from the documents themselves, or other surrounding circumstances, the lienor possesses information which would lead a reasonably prudent and law-abiding person to make further investigation.' " The court further held that "in the absence of circumstances putting them upon notice, persons dealing with automobile paper in due course and in good faith, may deal with it upon the faith of the ownership being as it

appears upon the papers to be; and that, if they have made the prescribed inquiry as to the owners so appearing, the Court, in the exercise of a sound discretion, may remit the forfeiture as to them." (R. 48–49, No. 627, present term; 99 F. (2d) 498, 500.)

On March 13, 1939, this Court granted the Government's petition for writ of certiorari in that case (No. 627, present term) and assigned the case for argument immediately following the reargument in the instant case.

We thus have two Circuit Courts of Appeals (Fourth and Fifth Circuits) recognizing that the third condition of the statute is open to the construction contended for by the Government that a claimant is charged with a duty of making inquiry as to any one bearing a liquor record or reputation and having a right under the contract of sale, and that this view is supported by the decision of the Circuit Court of Appeals for the Eighth Circuit in the *Federal Motor Finance* case, but nevertheless holding, in effect, that the statute does not mean what it says and that Congress did not intend to impose upon a claimant the duty of investigating the real purchaser unless from the documents themselves or other surrounding circumstances the claimant is put on notice that some one else is interested in the transaction.

To permit a finance company, in a case such as this, to adopt a course of procedure which allows

it to rely solely upon the papers before it and what they reveal is, we submit, to sanction a construction of the statute which fails to meet either the second or the third condition thereof.

Such an interpretation has the effect of protecting the interests of automobile finance companies at the expense and sacrifice of protection of the interests of the Government in its revenue. While it was the purpose of the statute to relieve innocent lienors against a harsh condemnation of their interests in property, it was not intended to enlarge the opportunities to defraud the revenue. Except for the statute in question lienors would have no standing in court. Judge Paul of the United States District Court for the Western District of Virginia in his opinion in *United States* v. *One Ford Coupe*, 20 F. Supp. 44, 48, referred to the increasing number of bootleggers and dealers using straw purchasers and transferring titles to finance companies for the purpose of defrauding the revenue laws. District Judge Underwood in his opinion in the *Automobile Financing, Inc.*, case, *supra*, said (R. 26–27, No. 627; 22 F. Supp. 507, 509–510):

> It appears, therefore, that it [the claimant finance company] acted in good faith, but the law requires something more than the exercise of good faith and requires that finance companies take reasonable precautions against fictitious sales where the same can be checked by the exercise of reasonable

> care. The practice of making fictitious sales for the benefit of bootleggers and transferring the title papers to an innocent finance company has grown to such an extent as to embarrass the enforcement of the revenue laws, and, while care should be exercised to relieve innocent owners against harsh condemnation of their property, nevertheless the power to do so should not be so loosely exercised as to give encouragement to violators of internal revenue laws. The immunization of an automobile against forfeiture by such schemes would be simply forcing the court to play its prearranged and expected role in ordering a release. "In a case like this the interest of citizens must be subordinated to the exigencies of government, as for many years heretofore." *United States* v. *1935 Ford Coupe,* D. C., 17 F. Supp. 331, 333.

Section 204 of the statute was manifestly designed not only to protect the interests of those whose property has been forfeited under the internal revenue laws through no fault of their own, but also to protect the interests of the Government in its revenue. While Section 204 (a) gives the District Courts exclusive jurisdiction to remit or mitigate forfeitures, Section 204 (b) provides specifically that the court "shall not allow the claim of any claimant for remission or mitigation *unless and until*" [Italics ours] he proves the existence of two conditions in all cases, and in certain cases, such as that at bar, the existence of an additional condition (see Government's brief on original argu-

ment, pp. 2–3). In the Government's principal brief it was pointed out that persons dealing in automobiles and in automobile finance paper obviously do so with full knowledge that automobiles are particularly adapted to and are frequently used in violating the internal revenue laws and that they also know that their greatest risk is the danger of the seizure of the vehicles for violating such laws.[2] Certainly the claimant here, a company long engaged in the business of financing the purchase of automobiles, cannot claim that it was not aware of this hazard, particularly since the reports show that on at least three different occasions before the enactment of the present statute it had appeared in court for the purpose of seeking to salvage its interests in automobiles which had been used in violating the liquor laws.[3] Since the claimant ob-

[2] The figures given below, which have been furnished by the Statistical Section of the Alcohol Tax Unit, Treasury Department, show the number of automobiles and trucks seized by that Unit in connection with liquor violation cases during the period since July 1, 1935. Detailed data by States and by months were published in the Annual Reports of the Commissioner of Internal Revenue for the fiscal years 1936 to 1938, inclusive.

Fiscal year ended June 30	Automobiles	Trucks	Total
1936	4,641	470	5,111
1937	3,973	490	4,463
1938	3,730	495	4,225
First 8 months of 1939	2,690	308	2,998
Total	15,034	1,763	16,797

[3] See *Commercial Credit Co.* v. *United States*, 5 F. (2d) 1 (C. C. A. 6th) (1925); *United States* v. *Commercial Credit*

viously had knowledge of the bootleg hazard involved in the business in which it was engaged, it might well be argued that under the decisions relating to implied notice it can not be heard to say that it did not have "knowledge" that the vehicle in question would be used in violating the liquor laws, within the meaning of condition (2) of the statute. However, it is not necessary to go so far, since these decisions at least support the view contended for by the Government in its principal brief that the claimant is estopped, under the circumstances, to say that it did not have "reason to believe," within the meaning of the second condition, that the automobile would be illegally used.

A succinct statement of the doctrine of implied notice is found in the decision of this Court in *Wood* v. *Carpenter,* 101 U. S. 135, 141, in which this Court quoted the following from *Kennedy* v. *Greene,* 3 Myl. & K. 722:

> Whatever is notice enough to excite attention and put the party on his guard and call for inquiry, is notice of everything to which such inquiry might have led. When a person has sufficient information to lead him to a fact, he shall be deemed conversant of it.

In *Daniel* v. *Tolon,* 53 Okla. 666, 684, it was said that, "In such cases means of knowledge, with a duty of using them, are deemed equivalent to knowledge itself, and passive good faith will not serve to excuse wilful ignorance."

Co., 20 F. (2d) 519 (C. C. A. 4th) (1927); *Commercial Credit Co.* v. *United States*, 276 U. S. 226 (1928).

And in *Scheckells* v. *Ice Plant Mining Co.*, 180 S. W. (Mo.) 12, it was said (p. 15):

> The law fastens liability on the element of knowledge whether it be actual or constructive; and to be aware of certain facts and circumstances which would lead ordinarily careful and vigilant persons to know about a certain condition is, in the eyes of the law, knowledge of that condition. In other words, in the face of certain facts and circumstances a person will not be heard to say, "I did not know."

Statements from other decisions and authorities with reference to the doctrine of implied knowledge will be found in *Charles* v. *Roxana Petroleum Corp.*, 282 Fed. 983, 989–991 (C. C. A. 8th), certiorari denied, 261 U. S. 614; see also *Electric Belt Line* v. *Ide & Son*, 15 Tex. Civ. App. 273; *Gamble* v. *Black Warrior Coal Co.*, 172 Ala. 669; *Street* v. *Treadwell*, 203 Ala. 68; Bouvier's Law Dictionary (Rawle's 3d Revision), Vol. 3, p. 2368.

We submit therefore that the decision of the court below in the instant case, that the claimant had no reason to believe, within the meaning of condition (2), that the vehicle would be illegally used because it did not know that Landrum Walker, the fictitious purchaser, was not the real purchaser, was erroneous. The reason the claimant did not know is that it made no effort to ascertain the true facts. Despite the knowledge imputable to it of the bootleg hazard involved in the business in which it was engaged, it chose to

rely solely upon the documents before it and what they disclosed. It consequently preferred to remain in its favored state of ignorance by refraining from seeking knowledge. It had the means of knowledge, in that it could have inquired of the dealer or the fictitious purchaser, but it conveniently closed its eyes to information within its reach. Its "passive good faith will not serve to exclude wilful ignorance." *Daniel* v. *Tolon, supra.*

The court likewise erred, we submit, in its construction of condition (3) of the statute. The court held that under it Congress did not intend to impose upon a claimant the duty of investigating every person having an interest in the property unless from the documents themselves or other surrounding circumstances the claimant possesses information which would lead a reasonably prudent and law-abiding person to make a further investigation. The statute specifically provides, however, that where the claimant's interest arises out of or is in any way subject to any contract or agreement under which a person having a record or reputation for violating the liquor laws has a right to the property, then the claimant shall make certain investigations of such person. There is nothing in the statute limiting the investigation to persons named in the documents. It is apparent that Congress did not intend by its language in condition (3) that claimants, including automobile finance companies, should be permitted to ignore the possibilities of latent interests in property and

accept at face value the names and signatures appearing on paper purchased by them, being assured they would be saved from loss under the forfeiture statutes if the property covered by such paper was used in violating the internal revenue liquor laws. Not only did the statute impose a specific duty on the claimant to make certain investigations in this case, but the claimant's general knowledge of the bootleg hazards involved in such transactions put it on notice, aside from anything appearing in the documents which it might have before it. It was not only engaged in financing the purchase of property (automobiles) with respect to which this Court in *Goldsmith-Grant Co.* v. *United States*, 254 U. S. 505, said (p. 513) it would "have to ascribe facility * * * as an aid to the violation of the law," but it was fully aware of the fact that automobiles are frequently so used, of the laws governing their condemnation for such use, and of its duty if it hoped to obtain a remission or mitigation of the condemnation, to so conduct its business as to prevent the loss of its property. The claimant may therefore not be heard to say that it was not put on notice sufficiently to cause it to inquire diligently into the so-called straw purchaser transaction here involved with a view to discovering a possible secret or latent interest of a person having a record or reputation for violating the liquor laws. We submit that if under the specific terms of condition (3) the claimant was not required to investigate the real purchaser at its peril, it was at least

required to show, before it could assert compliance with the statute, that it made a reasonable effort to ascertain, as by inquiring of the dealer or the fictitious purchaser, who the real purchaser and user of the car was so that he could be investigated as contemplated by the statute.

Of course, a claimant has the choice of making the investigation prescribed by the statute or of relying upon his own judgment, but if he relies upon his own judgment and does not make the investigation, he takes the risk, we submit, of having his application for a remission of the forfeiture denied where it develops that a person having a record or reputation for violating the liquor laws is the real purchaser of the vehicle.

CONCLUSION

For the reasons stated in this and in the Government's principal brief, the judgment of the court below should be reversed.

Respectfully submitted.

ROBERT H. JACKSON,
Solicitor General.
BRIEN MCMAHON,
Assistant Attorney General.
GORDON DEAN,
Special Assistant to the Attorney General.
MAHLON D. KIEFER,
W. MARVIN SMITH,
Attorneys.

APRIL, 1939.

U. S. GOVERNMENT PRINTING OFFICE: 1939

IN THE

Supreme Court of the United States

OCTOBER TERM, 1937

No. [redacted] 10

UNITED STATES OF AMERICA, *Petitioner*

v.

ONE 1936 MODEL V-8 DE LUXE COACH, MOTOR NO. 18-3306511, COMMERCIAL CREDIT COMPANY, CLAIMANT

MEMORANDUM FOR CLAIMANT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

DUANE R. DILLS,
Counsel for Claimant.
100 East 42nd Street,
New York City.

EUGENE E. HEATON,
Baltimore, Maryland.
Of Counsel.

INDEX

CITATIONS

CASES:

In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 815

UNITED STATES OF AMERICA, PETITIONER,

v.

ONE 1936 MODEL FORD V-8 DE LUXE COACH, MOTOR NO. 18-3306511, COMMERCIAL CREDIT COMPANY, CLAIMANT

MEMORANDUM FOR CLAIMANT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Claimant, Commercial Credit Company, prays that the petition for writ of certiorari filed by the Petitioner herein be denied, and respectfully represents as follows:

1. Opinions Below.

The opinion of the District Court (R. 5-13) is reported in 19 F. Supp. 470, and the opinion of the Circuit Court of Appeals (R. 26-28) is reported in 93 F. (2nd) Advance Sheets 771.

2. Reasons for Denying the Writ.

First. The Circuit Court of Appeals rightly upheld the findings of the District Court, that the evidence was sufficient to meet the statutory requirements to give the District Court exclusive jurisdiction to remit the forfeiture. The statute provides that the District Court has exclusive jurisdiction to remit or mitigate a forfeiture upon proof—

1. that Claimant has an interest in the vehicle, acquired in good faith;
2. that Claimant had at no time any knowledge or reason to believe that the vehicle was being or would be used in violation of the liquor laws;
3. that Claimant made certain prescribed inquiries before Claimant's interest arose out of a contract under which any person having a record or reputation for violating the liquor laws has a right to the vehicle. Section 204 a and b, Title 2 of the Liquor Law Repeal and Enforcement Act of August 27, 1935, C. 740, 49 Stat. 872, 878 (U. S. C. A., Supp. II, Title 27, Sec. 40a).

The District Court found as a fact that Claimant had proved all three of the above mentioned statutory conditions, and thereupon exercised its discretion to remit the forfeiture. The Circuit Court affirmed. The Petitioner concedes that Claimant proved (1) that Claimant had an interest acquired in good faith; (2) that Claimant had no knowledge that the vehicle would be used in violation of the liquor laws (page 7 of the petition); and (3) that Claimant made investigation of the record and reputation of Landrum Walker, the person who signed the contract to purchase the vehicle (page 4 of the petition). Petitioner, however, contends that Claimant did not prove—

(a) that it had "no reason to believe" that the vehicle was being or would be used in violation of the liquor laws, as provided in (2); and
(b) that it had investigated the person having the "right with respect to such vehicle", as provided in (3).

(a)

The lower courts were satisfied that the evidence proved that Claimant had "no reason to believe" that the vehicle was being or would be used in violation of the liquor laws. Petitioner urges that the court should have taken judicial notice that "persons dealing in automobiles and in automobile finance paper do so with full knowledge that automobiles are frequently used in violating the law" (page 7 of the petition), and that "Claimant must have known from experience that the very device by which it was deceived in this case is frequently employed by bootleggers in purchasing automobiles" (page 8 of the petition). Petitioner argues that Claimant did not prove that it had "no reason to believe" that the vehicle was being used in violation of the liquor laws, since it did not prove that it had inquired of Landrum Walker, the purchaser who signed the contract, or of the dealer, the person who sold the car and assigned the contract to Claimant, whether Landrum Walker, the person signing the contract, was the real purchaser and user of the car.

It is a matter of common knowledge that of all the automobiles in use, only an insignificant percentage thereof are used in violation of the liquor laws. It would certainly be presumptuous, therefore, to ask the court to take judicial notice that automobiles are used in violation of law, and it is unreasonable to impose upon Claimant the assumption that all of the many thousands

of automobiles financed by it are likely to be used in violation of the law. See *Wilson Motor Company v. United States* (*C. C. A. 9*) 84 Federal (2d) 630. The courts do not require a litigant to do a useless and unnecessary thing. Obviously, it would have been useless for the Claimant here to have made the inquiry, suggested by the Petitioner, of Landrum Walker or of the dealer. Landrum Walker and the dealer in effect answered such an inquiry when they executed the conditional sale contract for the automobile.

(b)

Landrum Walker signed the contract as purchaser. Benjamin Walker did not sign the contract and he was unknown to Claimant. Benjamin Walker was the real purchaser and Landrum Walker the nominal purchaser. So far as Claimant knew or the papers disclosed, Landrum Walker was the real and only purchaser. Claimant investigated Landrum Walker as provided in (3) and did not investigate Benjamin Walker. The lower courts held that Claimant, under these circumstances was not required to investigate Benjamin Walker and satisfied the statutory requirement when it investigated Landrum Walker. Petitioner, however, contends that the statute required the investigation of Benjamin Walker, as well as Landrum Walker, by Claimant, although Benjamin Walker was not a party to the contract, and was unknown to Claimant, because Benjamin Walker was a person having a right to the vehicle within the meaning of the statute. The statute, however, reads that if the Claimant's interest arises out of *a contract* "under which any person having a record or reputation * * * has a right with respect to the vehicle", such person shall be investigated. The statute does not require an investigation of anyone having a right to or claiming a right to the vehicle,

but only those persons who claim a right under *the contract* out of which the interest of the Claimant arises. Landrum Walker was the purchaser named in the conditional sale contract in the case at bar. That contract was sold by the dealer to Claimant. Claimant's interest arose out of that contract. Landrum Walker was, therefore, the person the statute required to be investigated, because it was the contract on which the plaintiff bases its claim, and "under which" Landrum Walker had a right to the vehicle. Petitioner unduly stresses the words in the statute "right with respect to such vehicle" (page 9 of the petition) without reading in connection therewith the words "*contract or agreement under which any person* * * * has a right with respect to such vehicle." Petitioner apparently appreciates that Petitioner's technical contention "places too strict a construction upon the statute and too great a burden upon the claimant when it has no knowledge or reason to suspect that the person whose name appears in the documents before it is not the real purchaser." (pages 10-11 of petition)

Second. The Circuit Court of Appeals rightly approved the exercise of judicial discretion by the District Court. Petitioner does not allege in the specifications of error or in the argument that the District Court had abused its discretion or acted arbitrarily or capriciously. Accordingly, this Court should not disturb the exercise of judicial discretion by the District Court.

> "..... the claimant does not have an absolute right of remission or mitigation, but does have the right then to invoke the exercise of the court's discretion. That discretion is a judicial one, as distinguished from action merely arbitrary and capricious, and so it is subject to revision, if, though

only if, it has been abused." United States v. *One 1935 Dodge Rack-Body Truck* (C. C. A. 2) 88 Federal (2d) 613, at 615.

Third. The decision of this Court in this case will not be helpful to the many cases now pending before the District Courts. Since the remission or mitigation of forfeiture is discretionary with the District Courts, there will naturally be a contrariety of decisions by the District Courts. An infinite number of circumstances and facts might enter into the cases, which in some instances satisfy the court that forfeiture should be remitted or mitigated, and in other instances that remission or mitigation be denied. The courts have remitted or mitigated forfeitures in the following cases:

United States v. *One 1936 Ford Standard C. Automobile, etc.* (D. C. W. D. Tenn.) 13 F. Supp. 104

United States v. *One 1935 Chevrolet Truck, etc.* (D. C. D. Mass.) 14 F. Supp. 777

Wilson Motor Co. v. *United States* (C. C. A. 9) 84 F. (2d) 630

United States v. *One 1935 Model Pontiac Sedan Automobile* (D. C. W. D. Ky.) 15 F. Supp. 604

C. I. T. Corporation v. *United States* (C. C. A. 4) 89 F. (2d) 977

Universal Credit Co. v. *United States* (C. C. A. 6) 91 F. (2d) 388

United States v. *One 1936 Model Chevrolet Pick-Up Truck* (D. C. D. Penn.) 21 F. Supp. 165

United States v. *C. I. T. Corporation* (C. C. A. 2) 93 F. (2d) 469

The courts have refused to remit or mitigate forfeitures in the following cases:

United States v. *One 1935 Chevrolet Coupe* (D. C. D. Me. S. D.) 13 F. Supp. 986

United States v. *One 1933 Ford V-8 Coach* (D. C. E. D. Ill.) 14 F. Supp. 243

United States v. *One Plymouth Coupe, Engine No. PC 93353* (D. C. D. Md.) 14 F. Supp. 610

United States v. *One 1936 Model Lafayette C. A. etc.* (D. C. W. D. Ky.) 14 F. Supp. 1003

C. I. T. Corporation v. *United States* (C. C. A. 4) 86 F. (2d) 311

United States v. *1935 Ford Coupe* (D. C. D. Me.) 17 F. Supp. 331

United States v. *One Ford V-8 Truck* (D. C. D. Wyom.) 17 F. Supp. 439

Federal Motor Finance v. *United States*, 88 F. (2d) 90

United States v. *One Dodge Rack-Body Truck* (C. C. A. 2) 88F. (2d) 613

United States v. *One Chevrolet Sedan* (D. C. E. D. Pa.) 18 F. Supp. 799

United States v. *One Chrysler Sedan* (D. C. M. D. Pa.) 18 F. Supp. 684

United States v. *One Ford Coach Automobile* (W. D. Va.) 20 F. Supp. 44

United States v. *One 1936 Model Ford C. Automobile* (D. C. W. D. So. Car.) 20 F. Supp. 607

United States v. *One Ford Coupe, Pa. License 831-H-5* (D. C. D. Delaware) 21 F. Supp. 156

United States v. *One 1936 Studebaker Sedan, etc.* (D. C. W. D. Washington, N. D.) 21 F. Supp. 499

3. Conclusion

The petition for certiorari should be denied, and the decision below should be allowed to stand. The decision of the District Court was reached after due consideration of all the circumstances in the exercise of its exclusive jurisdiction, and there is nothing in the record to indicate that the Court abused its power or that its action was arbitrary or capricious.

DUANE R. DILLS,
Counsel,
New York City.

EUGENE E. HEATON,
Baltimore, Maryland,
Of Counsel.

March 23, 1938.

FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1938

No. 10

THE UNITED STATES OF AMERICA, *Petitioner*

v.

ONE 1936 MODEL FORD V-8 DE LUXE COACH, MOTOR NO. 18-3306511, COMMERCIAL CREDIT COMPANY, CLAIMANT

On Writ of Certiorari to the United States Circuit Court of Appeals for The Fourth Circuit

BRIEF FOR THE CLAIMANT

DUANE R. DILLS,
Counsel for Claimant.
100 East 42nd Street,
New York City.

EUGENE E. HEATON,
Baltimore, Maryland.
Of Counsel.

INDEX

CITATIONS

Cases:

Statutes:

In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 10

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

ONE 1936 MODEL FORD V-8 DE LUXE COACH, MOTOR NO. 18-3306511; COMMERCIAL CREDIT COMPANY, CLAIMANT

On Writ of Certiorari to the United States Circuit Court of Appeals for The Fourth Circuit

BRIEF FOR THE CLAIMANT

Opinions Below

The opinion of the District Court (R. 5-13) is reported in 19 F. Supp. 470. The opinion of the Circuit Court of Appeals (R. 26-28) is reported in 93 F. (2d) 771.

Jurisdiction

This case comes before the United States Supreme Court upon writ of certiorari directed to the United States Circuit Court of Appeals for the Fourth Circuit under Section 240 of the Judicial Code granted on April 4, 1938 by this Court on application by the Government.

Statute Involved

Section 204 (a) and (b), Title II, of the Liquor Law Repeal and Enforcement Act of August 27, 1935, c. 740, 49 Stat. 872, 878 (U. S. C., Supp. III, Title 27, Sec. 40a), provides:

> (a) *JURISDICTION OF COURT.* — Whenever, in any proceeding in court for the forfeiture, under the internal-revenue laws, of any vehicle or aircraft seized for a violation of the internal-revenue laws relating to liquors, such forfeiture is decreed, the court shall have exclusive jurisdiction to remit or mitigate the forfeiture.
>
> (b) *CONDITIONS PRECEDENT TO REMISSION OR MITIGATION.* — In any such proceeding the court shall not allow the claim of any claimant for remission or mitigation unless and until he proves (1) that he has an interest in such vehicle or aircraft, as owner or otherwise, which he acquired in good faith, (2) that he had at no time any knowledge or reason to believe that it was being or would be used in the violation of laws of the United States or of any State relating to liquor, and (3) if it appears that the interest asserted by the claimant arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating laws of the United States or of any State relating to liquor has a right with respect to such vehicle or aircraft, that, before such claimant acquired his interest, or such other person acquired his right under such contract or agreement, whichever occurred later, the claimant, his officer or agent, was informed in answer to his inquiry, at the headquarters of the sheriff, chief of police, principal Federal internal-revenue officer engaged in the enforcement of the liquor laws, or other principal

local or Federal law-enforcement officer of the locality in which such other person acquired his right under such contract or agreement, of the locality in which such other person then resided, and of each locality in which the claimant has made any other inquiry as to the character or financial standing of such other person, that such other person had no such record or reputation.

Statement

The facts of this case are stipulated by counsel in the Bill of Exceptions (R. 18-20) and are as follows:

"The Ford automobile was sold by the Greenville Auto Sales, Incorporated (hereinafter referred to as the dealer) on October 3, 1936, through its agent, to Benjamin Guy Walker, who in part payment of the purchase price of the Ford Automobile exchanged an old car paid for by him, but registered in his wife's name. He was given terms for the payment of the purchase price under a conditional sales contract, but the contract, drawn by an agent of the dealer, was made in the name of his brother, Landrum P. Walker, who formally executed the agreement by signing it "L. P. Walker", and who was commonly known as Paul Walker. Benjamin Guy Walker and his wife at the time of the sale were having some domestic infelicities and he had the conditional sales contract drawn and executed in the name of his brother in order to place the title of the new automobile "where his wife could not reach it". Landrum P. Walker had no interest in the transaction except to comply with the request of his brother. Guy Walker made the transaction with the dealer through its agent, Mr. Elrod. He selected the car he wanted, made the agreement and handled the transaction

himself. Paul Walker drove the car from the place of business of the dealer. Guy Walker at the time, and for two or three weeks after the purchase of the car, was living at the home of his brother. Only one payment was made on the conditional sales contract before the seizure, and that was made by Guy Walker to the dealer.

"It was admitted by all the parties that Benjamin Guy Walker had a previous record and a reputation for violating both the state and federal laws relating to liquor. His brother, Paul Walker, was convicted of violating the National Prohibition Act in 1929, and was duly sentenced therefor in this court, but his record and reputation since serving the sentence imposed were good.

"On the date the sale was consummated the dealer submitted the contract to the Commercial Credit Company, the claimant here, who accepted by telephone, and subsequently on October 5th, in the usual course of business the dealer assigned the contract to the claimant and received a check for the same.

"The claimant before accepting the assignment of the sales contract from the dealer made an investigation of Landrum P. Walker by inquiring at the headquarters of the Sheriff of Greenville County and at the headquarters of the Chief of Police of the City of Greenville, the county and city where the interest was acquired, and the locality where Landrum P. Walker resided, as to the record and reputation for violation of the liquor law by Landrum P. Walker. The information was received from such offices that Landrum P. Walker had no such record or reputation. The information was given, however, from the Sheriff's office that Guy Walker had both a record and reputation as a violator of the state and

federal laws relating to liquor. No inquiry or investigation was made at the headquarters of the principal Federal Internal Revenue officer engaged in the enforcement of the liquor laws in that locality, or at the headquarters of any other principal local or federal law enforcement officer of the locality as to Paul Walker, and no inquiry or investigation whatsoever was made of Benjamin Guy Walker, the admitted real owner and purchaser of the automobile.

"The claimant had Landrum P. Walker investigated in August, 1936 by the Business Service Bureau of Greenville, South Carolina, in connection with his purchase of a refrigerator. However, no investigation at that time was made as to whether or not he had a reputation or record for violating the liquor laws; the investigation did disclose that he had a good reputation in the community where he lived, and such was the reputation given him by his employer at that time.

"The claimant purchased the conditional sales contract in good faith, believing that Landrum P. Walker was the purchaser and owner of the automobile. It had no knowledge, information or suspicion of the true facts until after the automobile had been seized by federal officers."

Summary of Argument

The only issue in this case is whether the court had jurisdiction to exercise its discretion in remitting the forfeiture. The Government recognized that as the sole issue. The Government does not allege in its specifications of error or in its arguments before this court that the District Court abused its discretion or acted arbitrarily or capriciously. The issue is well stated by the Government on page 27 of its brief, where it says:

> "There was no room for the exercise of discretion in this case, because the conditions prescribed by the statute, which must be complied with before the court has jurisdiction to exercise any discretion, had not been met by the claimant."

Claimant contends that the evidence justified the finding by the lower courts that claimant complied with the conditions precedent mentioned in (b) (1), (2) and (3) of the statute. The Government admits that claimant met these requirements except in two particulars, which the Government claims is fatal to claimant, to wit: that claimant did not prove it had no reason to believe that the automobile would be used illegally, as required in (b) (2), and that claimant did not make the investigation required in (b) (3). Claimant contends that it did meet these conditions precedent, and that the record supports its contention.

With respect to the issue as to "reason to believe", the facts, as stipulated in the record, are as follows:

> "The claimant purchased the conditional sales contract in good faith, believing that Landrum P. Walker was the purchaser and owner of the automobile. *It had no knowledge, information or suspicion of the true facts* until after the automobile had been seized by the federal officers." R. 20 (Italics ours)

Notwithstanding this finding of fact by the District Court, and the stipulation that it is the fact, the Government contends that it is not the same or equivalent to a finding or stipulation that claimant had no "reason to believe". The District Court in making the finding unquestionably intended it to be a finding that the claimant had no "reason to believe" because on such finding the court took jurisdiction and exercised its discretion,

Claimant contends the court was justified in so doing, and that the words in the finding and stipulation "had no knowledge, information or suspicion of the true facts" are certainly as broad, and if anything broader, than a finding that claimant had no "reason to believe." The Circuit Court of Appeals, after reviewing the facts concluded "The claimant therefore complied with the conditions of sub-section (b) (1) and (2), for it had acquired its interest in the vehicle in good faith, and had neither knowledge nor *reason to believe* that it would be illegally used." R. 27 (Italics ours)

With respect to the issue as to the statutory investigation, claimant contends that the lower courts were right in holding that claimant had met the requirements of (b) (3) when claimant investigated, as required by the statute, Landrum P. Walker, who signed the conditional sales contract as purchaser, and particularly in view of the stipulated facts that claimant believed Landrum P. Walker, who signed the contract, was the purchaser and owner of the automobile. The Government contends that claimant was required by the statute to investigate Benjamin Guy Walker, the real owner and purchaser of the automobile and for whom Landrum P. Walker apparently was the nominal or straw purchaser. Claimant however had no knowledge, information or suspicion that Benjamin Guy Walker was the real owner or purchaser until after the seizure. The District Court in its opinion sets forth the report of the Judiciary Committee of the Senate and House, and concludes that the statute did not require an investigation of Benjamin Guy Walker under the circumstances. The Circuit Court of Appeals said on this point (R. 28)

> "But in our view Congress did not intend to impose upon the lienor the obligation to ascertain at his peril the identity of every person having an interest

in the property and to make inquiry of the law enforcement officers as to the previous record and reputation of every such person, unless from the documents themselves or other surrounding circumstances the lienor possesses information which would lead a reasonably prudent and law abiding person to make a further investigation."

The interest of Benjamin Guy Walker in the automobile was a fact to enter into the exercise of discretion by the court and not a jurisdictional point. As the Circuit Court points out that even though the District Court has jurisdiction and the lienor has complied with the statutory requirements, nevertheless the court may in its discretion deny remission when any reasonable grounds exist for such action.

ARGUMENT

I

THE COURTS BELOW DID NOT ERR IN HOLDING THAT CONDITION (b) (2) OF THE STATUTE HAD BEEN COMPLIED WITH, AND THAT CLAIMANT HAD NO REASON TO BELIEVE THAT THE AUTOMOBILE WOULD BE ILLEGALLY USED.

The Government in its argument under this point (Government's Brief 10-15) does not point out one single circumstance or piece of evidence in the stipulation of facts in support of its argument that the Courts below were in error, but instead the Government relies entirely upon conjecture and inference in no way based upon the facts as stipulated.

There is no fact in the record to support the Government's statement that Claimant closed its eyes to an obvious risk and then claimed it had no reason to believe there was such a risk. On the contrary, the stipulation

of fact states positively that Claimant believed Landrum P. Walker was the purchaser and owner of the automobile. (R. 20). The reasons for such a belief are not enumerated. Therefore, the positive statement of fact that Claimant believed Landrum P. Walker to be the purchaser and owner must include within it an admission by the Government that Claimant did everything reasonable and proper to justify the belief, otherwise the belief would not have been stipulated as a fact. The criticism that Claimant did not ascertain the true facts because it did not inquire of Landrum P. Walker or the dealer whether Landrum P. Walker was the real purchaser and user of the car is not well founded. When Landrum P. Walker and the dealer entered into the conditional sale contract for the sale of the car, that in effect answered such inquiry. Furthermore, the dealer, when he assigned the contract to Claimant thereby represented to the Claimant that Landrum P. Walker was the purchaser and owner of the car.

If there were any evidence or facts in this case which would have required an ordinarily prudent person to make inquiry of any person other than Landrum P. Walker then the Government should not have stipulated as a fact that Claimant in good faith believed Landrum P. Walker to be the purchaser and owner. Having so stipulated, the Government should not now be heard to question its own stipulation of fact in an effort to discredit the finding of the Court that Claimant had no reason to believe the car would be used illegally.

The general statement by the Government that automobiles are frequently used in violation of law and are especially adapted to violating the liquor laws is an erroneous assumption of fact and not justified by the record in this case. Of the millions of automobiles sold and used in this country only an infinitesimal number

are seized for violation of the liquor laws. This in itself is not sufficient to give Claimant "reason to believe" that every car with which it deals is likely to be used in violation of the liquor laws. The Government would have this Court take judicial notice of such erroneous assumption of fact and place undue and impossible burdens upon Claimant to investigate persons of whom it had no knowledge. If the contention urged by the Government were adopted, the words "knowledge and reason to believe", as used in the statute, would be meaningless and mere surplusage. "Reason to believe" would be present in every case in which an automobile is sold. "Knowledge and reason to believe" must obviously be acquired from some fact or circumstance present in each particular case sufficient to put the Claimant upon inquiry. There is no such fact or circumstance present in this case.

The Government broadly infers that the Claimant casually and negligently made its investigation. The Claimant submits that it used more than ordinary care in its efforts to comply with the statute by making inquiry of two law enforcement agencies as to the record and reputation of Landrum P. Walker, the purchaser of the automobile, based upon the documents and the information furnished to it. (R. 19). The Government alleges negligence on the part of the Claimant, but offers no convincing fact or circumstance to show that the Claimant acted other than any reasonably prudent and law-abiding person would act under the same circumstances.

II

THE COURTS BELOW DID NOT ERR IN HOLDING THAT CONDITION (b) (3) HAD BEEN COMPLIED WITH BY THE CLAIMANT BY VIRTUE OF ITS INVESTIGATION OF LANDRUM P. WALKER, THE APPARENT PURCHASER OF THE AUTOMOBILE, UNDER THE CONTRACT.

The Government insists that the Claimant should have determined who was the real purchaser of the automobile, and should have conducted the statutory investigation of such purchaser. Obviously in view of its searching investigation of the record and reputation of Landrum P. Walker, the signer of the contract, the Claimant would have investigated the record and reputation of Benjamin G. Walker, if it had knowledge of the existence of Benjamin G. Walker in the transaction. Since it had no such knowledge and the statement of facts so conceded (R. 20), there obviously would be no basis for alleging that Benjamin G. Walker should have been investigated.

The whole issue of this case is narrowed to the single proposition as to whether an obligation was imposed upon the Claimant to secure knowledge of the connection of Benjamin G. Walker with the transaction. It is admitted that the Claimant had no knowledge of the connection of Benjamin Walker with the transaction, nor has it been shown that any fact or circumstance existed which would put the Claimant on notice that the transaction was in any respect other than it appeared on its face.

The Circuit Court below has had this proposition before it twice, in this case and in *C. I. T. Corporation vs. United States*, *89 F. (2d) 977*. The Circuit Court below in this case said:

> "But in our view Congress did not intend to impose upon the lienor the obligation to ascertain at his

in the property and to make inquiry of the law enforcement officers as to the previous record and reputation of every such person, *unless from the documents themselves or other surrounding circumstances the lienor possesses information which would lead a reasonably prudent and law abiding person to make a further investigation.*" (*Italics ours*)

The Claimant, under the circumstances of this case, was not obliged to look beyond the contract which was assigned to it. Landrum Walker signed the contract as purchaser, undertook the obligation created by the contract and received in return therefor the right to the use and enjoyment of the car. The Government does not deny that Claimant has acquired an interest in the automobile. Its interest was and could only be acquired under the contract signed by Landrum Walker. Benjamin Walker did not sign the contract, undertook none of the obligations and was not a party to *the contract* out of which the interest of the Claimant arose. The statute reads that if the Claimant's interest arises out of a *contract* "under which any person having a record or reputation * * * has a right with respect to the vehicle" such person shall be investigated. Claimant had no knowledge or information, and the statement of facts so concedes (R. 20) that any person other than Landrum Walker had any interest whatever in the car. It is asserted by the Government that under *the contract* Benjamin Walker was the real party at interest in respect to the car. This is not so in respect to the contract held by Claimant. Whatever right Benjamin Walker had to the car was not shown on the contract which Claimant acquired but existed through an arrangement between Landrum Walker and Benjamin Walker unknown to Claimant. Benjamin Walker was not, therefore, a person to be investigated under the statute.

Not a single circumstance has been shown to exist which would have indicated to the Claimant that the transaction was other than it appeared to be upon its face. It has not been shown that the Claimant acted or failed to act other than a reasonably prudent person would have acted under the circumstances.

The Government asserts that in so-called straw man transactions, the statute applies to the real purchaser and requires that the real purchaser be investigated in accordance with the statute. (Government Brief P. 18). However, the Government apparently believes that such a construction of the statute might be too strict (Government Brief P. 22) and might place too great a burden upon the Claimant where a straw purchaser transaction is involved (Government Brief P. 23). But it contends that the Claimant should at least be required to make a reasonable effort to ascertain the identity of the real purchaser so that he may be investigated as contemplated by the statute.

It is obvious that in order to impose such an obligation upon the Claimant, which the statute by its terms does not do, it must be shown that the Claimant had knowledge of some fact or circumstance sufficient to put it upon notice that the real facts of the transaction were other than as they appeared on the documents themselves or other surrounding circumstances. This has not been shown. The statute does not command lienors, at their peril, to discover all of the facts back of every contract which they acquire. It lays down definite and specific rules to be followed. Its purpose is to protect the rights of innocent lienors. If there is any defect in the statute whereby the opportunities to defraud the revenue are increased, that problem is for the legislature and not the courts. However, the opportunities to defraud the revenue would not necessarily be increased by upholding the decision of the District Court in this case. The

District Courts may still, in their discretion, refuse to remit forfeitures even though Claimants have shown compliance with the statute.

The Government concedes this reasoning to be sound law (Government Brief P. 24) The Fourth Circuit apparently assumed the decision of the Eighth Circuit in *Federal Motors Finance Company vs. United States, 88 F. (2d) 90* to be in conflict with the decision of the Fourth Circuit in this case. We agree with the Government that the decision of the Eighth Circuit in the *Federal Motors Finance Company case* is, however, susceptible to other interpretation (Government Brief P. 26). We submit that the *Federal Motors Finance Company* decision is susceptible to the interpretation that the Court, after taking jurisdiction, exercised its discretion to deny remission of forfeiture because the Court believed that remission of forfeiture would afford a too easy avenue of escape by bootleggers in defrauding the public revenue, and was therefore a circumstance to be taken into consideration in determining the Claimant's petition for remission. In the case at bar, however, the Court apparently recognized that the statute was one for relief of innocent lienors and, therefore, to exercise its discretion to the prejudice of an innocent lienor under the circumstances of this case, would be to disregard the mandate of Congress.

III

The Circuit Court did not Err in Holding that the District Court, Considering all of the Circumstances, Properly Exercised its Discretion in this Case.

The Government does not contend that the District Court improperly exercised its judicial discretion in granting the remission. It argues that the District Court had no discretion to remit the forfeiture in this

case since the Claimant had not complied with the statute. The Claimant feels that it has shown compliance with the statute. To hold that the District Court did not have the "exclusive jurisdiction" to remit the forfeiture in this case after consideration of all the facts and circumstances would virtually result in stripping from the statute the flexibility which is so essential in giving effect to the intentions of Congress as expressed in the statute.

The section of the Act giving to the District Courts exclusive jurisdiction to remit or mitigate forfeitures has been interpreted in numerous decisions. The Circuit Court of Appeals, Second Circuit, in affirming the District Court's decision denying a claimant's petition under the Act in *United States vs. One 1935 Dodge Rack-Body Truck, Motor No. T-13-6144, License 138-957, 88 F. (2d) 613. at 615*, stated:

> "Although the statute under which this claim was made does not in terms require the Court to remit or mitigate the forfeiture, it does give *exclusive jurisdiction* to do so, making the exercise of such jurisdiction subject to certain conditions precedent. While even if such conditions are fulfilled, a claimant does not have the absolute right to remission or mitigation, he does have the right then to invoke the exercise of the Court's discretion. *That discretion is a judicial one, as distinguished from action merely arbitrary and capricious, and so it is subject to review if, though only if, it has been abused.*" (Italics ours)

In *Wilson Motor Company vs. United States, 84 F. (2d) 630, the Circuit Court of Appeals, Ninth Circuit* recognized the intention of Congress to confer exclusive jurisdiction upon the District Courts when it said at page 632:

"It defies common sense to suppose that the Congress intended in enacting the provisions for these forfeitures of vehicles that an obligation was imposed on great automobile companies having tens of thousands of automobiles operating throughout the whole United States on conditional sale contracts, to follow each one of them and prevent the purchaser from violating the prohibition or revenue laws, failing in which they irrevocably forfeited the automobile. Or that an obligation rested on the California owner so disposing of his car to assume such responsibility for its conduct in the States of Washington or New York.

"The Government's brief advises that prior to the Act of August 27, 1935, the procedure of the Government to afford relief to these innocent owners was under the provision of compromise powers given the Attorney General and the Treasury under Section 1661, 26 U. S. C. A. The brief cites cases in which this procedure was recognized. Having this practice of the Government in view, the solution of the question is found in the provision of Section 204 (a), as follows:

> 'Whenever, in any proceeding in Court for the forfeiture, under the internal revenue laws, of any vehicle (etc.) * * * the Court shall have exclusive jurisdiction to remit or mitigate the forfeiture.'

"The use of the word *exclusive* is significant. Congress thereby recognizes that relief had been given previously to the innocent owners by a procedure before other agents of the Government who are now deprived of that jurisdiction after a decree

The Circuit Court below in *C. I. T. Corporation vs. United States*, *85 F. (2d) 311*, adopted the view expressed by the Court in the Wilson Motor Company case (supra) and stated at page 312:

> "We agree with the Ninth Circuit that it was the intent of Congress by the enactment of Section 204 (a) of the Act of August 27, 1935, to withdraw from the officials named in the above sections the power to remit or mitigate the forfeiture of a vehicle or aircraft seized for violation of the internal revenue laws in regard to liquors and to confer exclusive jurisdiction over the same upon the Court in which any proceeding for forfeiture is filed."

The District Court below had both a thorough and far-reaching appreciation of the responsibility placed upon it by the statute. Its analysis and consideration of the problem presented to it included a narrative of the history of the Act, which is both enlightening and persuasive (R. 11-13).

The Court quoted and reviewed the reports the Committee on Judiciary of the Senate and House of Representatives and the hearings on the bill before it was enacted into law and properly concluded that they support the construction of the Court that it should exercise its discretion in this case.

Conclusion

For the reasons stated it is respectfully submitted that the District Court did have jurisdiction and admittedly exercised its discretion free of any arbitrary or capricious conduct, and accordingly the judgment of the Circuit Court of Appeals should be affirmed.

Respectfully,

Duane R. Dills
Counsel
New York City

Eugene E. Heaton,
Baltimore, Maryland
Of Counsel

Supreme Court of the United States

OCTOBER TERM, 1938.

No. 10.

THE UNITED STATES OF AMERICA,
Petitioner,

v.

ONE 1936 MODEL FORD V-8 DE LUXE COACH, MOTOR NO. 18-3306511, COMMERCIAL CREDIT COMPANY,
Claimant.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

SUPPLEMENTAL BRIEF FOR THE CLAIMANT ON RE-ARGUMENT.

DUANE R. DILLS,
New York City,
EUGENE E. HEATON,
Baltimore, Maryland,
Counsel for Claimant.

Pandick Press, Inc., 22 Thames St., New York, U. S. A.

MICROCARD 22

TRADE MARK ®

MICROCARD® EDITIONS, INC.
PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

INDEX.

Citations.

Cases: PAGE

CASES: PAGE

STATUTES:

MISCELLANEOUS:

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

No. 10

THE UNITED STATES OF AMERICA,
Petitioner,

v.

ONE 1936 MODEL FORD V-8 DE LUXE COACH, MOTOR NO. 18-3306511, COMMERCIAL CREDIT COMPANY,
Claimant.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

SUPPLEMENTAL BRIEF FOR THE CLAIMANT ON RE-ARGUMENT.

This case is before the Court on the Government's petition for re-argument. The case originally came before this Court upon writ of certiorari directed to the United States Circuit Court of Appeals for the Fourth Circuit under Section 240 of the Judicial Code, granted on April 4, 1938 by this Court on application by the Government. After argument of the case this Court, on October 17, 1938, rendered a *per curiam* decision affirming the judgment of the Circuit Court of Appeals by an equally divided Court (305 U. S. IV). Thereafter, the Government filed a pet

tion with this Court for a re-hearing before a full bench, and the petition was granted on November 7, 1938. The judgment of affirmance theretofore entered was vacated, and the case restored to the docket for re-argument (305 U. S. XXVII).

Statute Involved.

The statute involved is set forth in the claimant's brief on the original argument, pp. 2-3.

Statement.

The statement of facts of this case is set forth in the claimant's brief on the original argument, pp. 3-5.

Summary of Argument.

The Government raises no new point in its supplemental brief on re-argument. It again contends, as it contended in its original brief, that the courts below erred in holding that claimant had complied with subdivisions (2) and (3) of Section 204 (b), Title II of the Liquor Law Repeal and Enforcement Act of August 27, 1935 (hereafter referred to as Section 204 (b)). Claimant contends otherwise. The issue in this case is whether the statute requires claimant to investigate a person of whom according to the stipulated facts "it had no knowledge, information or suspicion" (R. 20) as a condition precedent to jurisdiction of a court to remit or mitigate a forfeiture (See also pp. 5-8, claimant's original brief).

ARGUMENT

I.

The legislative intent in the enactment of Section 204 (b) was to protect the interests of innocent lienors.

Obviously any construction given to Section 204 (b) must take into account the purpose for which it was enacted, having regard to the evil intended to be remedied, as well as contemporaneous legislative pronouncements which may guide the Court toward arriving at the construction intended by Congress. The legislative intention must be ascertained. *Ebert* v. *Poston*, 266 U. S. 548.

The Government's supplemental brief admits, at page 11, that the intent of the statute was to relieve innocent lienors against harsh condemnations of their interests in property, and it has been frequently stated in cases similar to the instant one that the purpose of the statute was to ameliorate the hardship suffered by innocent lienors as a result of the forfeiture laws.

> *C. I. T. Corporation* v. *United States*, 89 F. (2d) 977 (C. C. A. 4th);
>
> *Wilson Motor Co.* v. *United States*, 84 F. (2d) 630 (C. C. A. 9th).

In *C. I. T. Corporation* v. *United States, supra*, the Circuit Court of Appeals for the Fourth Circuit said at page 979:

> "Manifestly the act was passed to ameliorate the hardships suffered by innocent lienors from the seizure of offending vehicles, and the reference in the third condition of the act to interests of the claimant and of the violator of the law in the vehicle

> under a contract or agreement shows that Congress had especially in mind the rights of finance companies under conditional sales contracts which undoubtedly constitute the most numerous class to which the act applies."

Since the instant case was decided, the case of *United States* v. *Automobile Financing, Inc.*, 99 F. (2d) 498 (now before this Court, No. 627 present term) was decided by the Circuit Court of Appeals for the Fifth Circuit. The facts of that case are very similar to those of the instant one, and the Court held that the long legislative and judicial history of the statute here involved, as well as the Committee reports, all tended to support the construction now urged by this claimant. The Court said at page 500:

> "The long legislative and judicial history of the struggles of those engaged in a large and legitimate industry, automobile financing, to protect themselves and their industry from the ruinous consequences of wholesale forfeitures, unreasonable and unjust as to them from the standpoint of bona fides, and the committee reports accompanying the passage of the Remission Act, all conspire to support, as the construction intended for the Act, that in the absence of circumstances putting them upon notice, persons dealing with automobile paper in due course and in good faith, may deal with it upon the faith of the ownership being as it appears upon the papers to be; and that, if they have made the prescribed inquiry as to the owners so appearing, the Court, in the exercise of a sound discretion, may remit the forfeiture as to them."

The District Court in the instant case likewise considered at length the legislative history of the statute and concluded that Congress had never intended to require

lienors to investigate, at peril of losing their security, persons, unknown to them who were the real purchasers of the vehicle.

A careful analysis of the report of the Chairman of the Senate Judiciary Committee on July 29, 1935 (Senate Report No. 1330, 74th Cong., 1st Session), and of the Chairman of the House Judiciary Committee on July 22, 1935 (House Report No. 1601, 74th Cong., 1st Session) bears out the contention of claimant that the intent of Congress was that lienors were required only to investigate persons known to them. The reports referred to above state, both at page 6, regarding the third condition precedent in the statute:

> "This last requirement is predicated upon the recognition of the 'bootleg hazard' as an element to be considered in investigating a person as a credit risk. As a matter of sound business practice, automobile dealers, finance companies, and prospective lienholders on automobiles examine records, and make inquiry of references and credit rating agencies as to the owner's or prospective purchaser's reputation for paying his debts and his ability to do so. This subsection *merely* requires that in the making of such inquiry, the 'bootleg hazard' also be examined as one aspect of the credit risk." (Italics ours.)

The clear implication of the reports is that lienors are now to investigate the bootleg hazard, in addition to the investigation they already make as a matter of sound business practice. Since the claimant can investigate only those of whom it has knowledge, obviously the bootleg hazard now required to be examined is a hazard in connection with the same persons. It is submitted that the language of the reports, stating that the subsection "merely" requires

the investigation of an additional hazard accords with the construction urged by claimant and would be totally unsuited to a description of such a requirement as the Government contends for, which would require the making of an investigation totally different from the investigation described in the reports.

Similarly, at the hearing on the bill (Senate Bill 3336) before the Senate Judiciary Committee, August 15, 1935, a representative of the Treasury Department which sponsored the bill testified as follows (See Minutes of Hearing, p. 13):

> "This section is of particular importance in connection with the discounting by a finance company of an automobile dealer's paper.
>
> "At the present time, the Secretary of the Treasury considers that the bootleg hazard is an element involved in the credit risk, and is just as much a part of the investigation by the finance company of a person as a credit risk as is his financial standing in the community. He requires that before a car be returned to the person claiming an innocent interest, the latter must prove that he made an investigation as to whether or not the purchaser had a bootlegger record, and found that he had none."

His testimony, too, is compatible with the claimant's contention that the statute does not place upon it a new burden so heavy as to be practically insuperable, but instead merely requires it to add to its customary credit investigation of a purchaser an additional examination of the bootleg hazard.

Moreover, in the enactment of Section 204 (b) Congress was continuing its purpose of protecting innocent lienors in forfeiture cases for liquor law violations. R. S. 3450 (26 U. S. C. 1441), under which these forfeitures are made,

was enacted in 1866 primarily to protect the public revenue in moonshine cases. When the Prohibition Amendment was adopted and enforcement laws were enacted, Congress recognized that the great new national industry in automobiles had developed since the enactment of Section 3450, and needed equitable protection against seizures under that harsh statute of which, in *J. W. Goldsmith, Jr.-Grant Co. v. U. S.*, 254 U. S. 505, a case arising before Prohibition, this Court had said at p. 510:

> "If the case were the first of its kind, it and its apparent paradoxes might compel a lengthy discussion to harmonize the section with the accepted tests of human conduct. Its words taken literally forfeit property illicifly used though the owner of it did not participate in or have knowledge of the illicit use. There is strength, therefore, in the contention that, if such be the inevitable meaning of the section, it seems to violate that justice which should be the foundation of the due process of law required by the Constitution."

Accordingly, Congress enacted Section 26 of the National Prohibition Act (41 Stat. 315, 27 U. S. C. 40) in order to protect the rights of innocent lienors, and this Court in a number of cases gave effect to the mandate of Congress.

Port Gardner Investment Company v. *United States*, 272 U. S. 564;

Richbourg Motor Company v. *United States*, 281 U. S. 528;

Davies Motors, Inc. v. *United States*, 281 U. S. 528;

Commercial Credit Co. v. *United States*, 276 U. S. 226.

After the repeal of Prohibition, innocent lienors no longer had the protective benefits of Section 26 of the National Prohibition Act, and became again subject to harsh forfeitures under Section 3450. Congress realized that the automobile industry, which had been born and had grown to be a major national industry long after the enactment of Section 3450, owed its growth in most part to a relatively new allied industry, automobile financing. Congress, therefore, as a matter of public interest, sought to continue in behalf of innocent lienors the protective features of former Section 26 of the National Prohibition Act by enacting Sections 204 (a) and (b) of the Liquor Law Repeal and Enforcement Act.

If the construction of Section 204 (b), sought by the Government, prevails, then the purpose and intent of Congress, shown by this legislative history, will have been ignored.

II.

"Reason to believe" as used in Section 204 (b) (2) must be based on specific and not general knowledge.

The issue involved in this case is a narrow one turning directly on the words of Section 204 (b).

It is the contention of the claimant that the words of the section are not susceptible of the construction which the Government attempts to place upon them.

The wording of subdivision (b) (2) requires that the claimant prove that he had at no time any knowledge or reason to believe that the car "*was being or would be used*" to violate liquor laws. (Italics ours.) The words "was or would be" are not the equivalent of "could or might be."

If Congress had intended that persons dealing with automobiles are chargeable with notice that the cars might be used in violation of the liquor laws, and therefore have reason to believe that automobiles would be so used, Congress would have employed available words appropriate to its purpose. Admittedly cars might be used for an illegal purpose, but this fact does not warrant the contention of the Government that all cars might be so used. Congress had in mind a specific car, because it uses the singular pronoun "it" in (b) (2), which says, "reason to believe that *it* was being or would be used in violation of law." (Italics ours.) Obviously the statute refers to specific knowledge or reason to believe, concerning a specific car, and not a general knowledge, as alleged by the Government, that all cars are susceptible to being used wrongfully. If the Government's contention is sound, then an innocent claimant in every seizure would have "reason to believe" that the car would be used in violation of the liquor laws, and the effort of Congress to protect innocent claimants would be an idle gesture.

The Government attempts (pp. 10 and 11 of the Government's supplemental brief) to impute to claimant specific knowledge that the car in question might be used to violate the liquor laws, because of a general knowledge of persons dealing in automobiles and in automobile finance paper that automobiles are adaptable to use in violating the liquor laws. In support of its contention, the Government, in a footnote on page 10 of its supplemental brief, sets forth a tabulation showing that a total of 5,111 cars and trucks were seized in 1936, 4,463 in 1937, 4,225 in 1938, and 2,998 in eight months of 1939. The official figures of registrations of cars and trucks in the various states, fur-

nished to us by the Automobile Manufacturers Association, show that, in 1936, 28,165,550 passenger automobiles and trucks were registered, in 1937, 29,705,220 were registered, and from the latest figures available over 29,210,000 were registered in 1938. It is interesting to note that in 1936, when the car in question was seized, the total seizures were only eighteen thousandths of one per cent. of the total registrations. It seems absurd to conclude, because 5,111 cars and trucks were seized in 1936, that therefore parties dealing in automobiles had reason to believe that 28,165,550 cars and trucks might be used in violation of the liquor laws. Furthermore, the Government's tabulation does not reveal in how many of the seizures it enumerates petitions for remission were filed, or how many of the seizures involved straw purchasers. It is believed by the claimant that the percentage of seizures involving straw purchasers, if calculated would be very small.

The Government attempts to establish some form of estoppel against the claimant in this case, because it says that the greatest risk of automobile finance companies is the danger of seizure of vehicles for violation of liquor laws, and that, because of the claimant's long experience in the business, it cannot assert that it was unaware of this hazard, particularly, says the Government, because on three different occasions, before the enactment of the present law, this claimant had sought relief in courts against forfeiture of automobiles (p. 10 of the Government's brief).

We admit that there is such a hazard, but we do not admit that it is the greatest hazard. Apparently the Government knows nothing about the existence of the automobile financing risks of theft, conversion, fire, collision,

attachment and various other hazards. However, because of the fact that the claimant took all reasonable and necessary steps to protect itself in the case at bar, in accordance with the provisions of the statute, not only by making its usual credit investigations, but by inquiring of two law enforcement agencies to determine whether a bootleg hazard was present (R. 19), the claimant cannot be accused of ignoring the risk of seizure for liquor law violations.

Moreover, it is interesting to observe that in the three cases cited in the footnote of the Government's brief (supplemental brief, p. 10), the claimant, Commercial Credit Company, was successful before this Court and the Fourth and Sixth Circuit Courts in establishing its good faith, and its right to the protection afforded innocent lienors by the enactments of Congress. We are unable to follow the Government in its contention that because we have been successful before this Court and other courts in forfeiture cases, therefore we are estopped in the case now at bar. It is unreasonable and seemingly unfair for the Government to urge that the claimant is estopped in this case because the claimant will not assume the impractical business policy of considering in each one of its many hundreds of thousands of transactions with purchasers of automobiles, that those purchasers are straw purchasers for unknown bootleggers. On the contrary, the claimant, because of its experience, has the right to assume that people of good reputation generally do not lend their names to further the activities of bootleggers. Particularly is this true in view of the claimant's credit investigations and investigations with law enforcement agencies. It is contrary to actual business experience and an unwarranted application of the doctrine of imputed knowledge to say that all cars financed

by the claimant are likely to be used to violate the liquor laws, or that they are apt to be used by persons other than those who sign the conditional sale contracts.

III.

Section 204(b) requires no investigation of persons of whom claimant has no knowledge, information or suspicion.

The language of Section 204 (b) (3) of the statute requires, as a condition precedent to a remission of forfeiture, that the claimant should inquire of stated law enforcement agencies concerning the record and reputation of any person having a record or reputation for violating liquor laws, if the claimant's interest in the forfeited vehicle arises out of or is in any way subject to any contract or agreement *"under which"* such person has a right with respect to the vehicle. (Italics ours.) The plain words of the statute require only the investigation of persons of bad repute who have a right *under the contract* to which the claimant's interest is subject. It is clear in the instant case that the liquor law violator who was the real purchaser of the car and who was unknown to the claimant had no right under the contract to which claimant's interest is subject. Any rights that he had arose out of another contract between himself and the straw purchaser.

In discussing Section 204 (b) the Circuit Court of Appeals for the Ninth Circuit observed, in *Wilson Motor Co.* v. *United States,* 84 F. (2d) 630 (C. C. A. 9th):

> "A remedial statute of this character should be liberally construed in favor of the objects of its beneficence. Guardian Trust & D. Co. *v.* Fisher, 200 U. S. 57, 69, 26 S. Ct. 186, 50 L. Ed. 367."

The purpose of the statute, as we have shown above, was to ameliorate the hardships suffered by innocent lienors through forfeitures. The Government still maintains the position taken in the original argument that Section 204 (b) requires lienors to investigate at their peril parties having a latent connection with the vehicle, even though the lienors may, as stipulated in this record, have no knowledge, information or suspicion of the existence of such parties. The Government says, however, that if such an investigation is not required, then at least the claimant is required to show reasonable efforts to ascertain the real purchaser and user of the car, by inquiry of the fictitious purchaser and the dealer (pp. 4, 5, 13 and 15 of the Government's supplemental brief). The conditional sale contract in the instant case is not in the record, but if we may be permitted to go outside of the record, the Court might be interested to know that, as is the case in all contracts purchased by claimant, L. P. Walker, the purchaser in the instant contract, agreed not to use or permit the car to be used contrary to the laws in respect to toxicating liquors or narcotics, and the dealer answered in the negative the question "Have you any reason to believe the purchaser violates any laws concerning liquor or narcotics?", and the dealer also warranted that the contract was genuine and what it purported to be.

While this contract is not in the record in the instant case, there is in the record in No. 627 the contract between the dealer and the straw purchaser, in which the straw purchaser agreed not to "use or permit said automobile to be used in transporting intoxicating liquors or for other illegal purpose" (R. 10, in No. 627, *United States* v. *Automobile Financing, Inc.*). Also, the dealer warranted that the contract was what it purported to be, and "that all state-

ments of fact therein contained are true" (R. 12-13, in No. 627). Furthermore there is testimony by the manager of the claimant in No. 627 that he inquired of the dealer as to who the straw purchaser was and received an answer that he was honest, reliable and law-abiding (R. 39 in No. 627). It is naive in the extreme, therefore, to suppose that either the dealer or the straw purchaser would, in answer to an inquiry by the claimant, reveal the true facts. Certainly in case No. 627 the dealer did not reveal the true facts, and moreover, the covenant in the contract in No. 627 not to use or permit the car to be used in violation of the liquor laws appears generally in all contracts of finance companies. In the instant case it is stipulated that the claimant had no knowledge, information of even suspicion of the true facts (R. 20). It is unreasonable to assume, if the straw purchaser, the bootlegger and the dealer conspired to deceive the finance company, that they would upon inquiry tell the finance company the true facts.

Therefore this interpretation of Section 204 (b) (3) must be rejected because it would incorporate in the statute an absurd requirement calling for the doing of futile acts. The construction given a statute must square with common sense and sound reasoning. This Court said, in *United States* v. *Katz*, 271 U. S. 354:

> "All laws are to be given a sensible construction; and a literal application of a statute, which would lead to absurd consequences, should be avoided whenever a reasonable application can be given to it, consistent with the legislative purpose."

See also *In re Blalock*, 31 F. (2d) 612 (N. D., Ga.) and *International Ry. Co.* v. *United States*, 238 Fed. 317 (C. C. A. 2d).

Similarly, in *Missouri Pac. R. Co.* v. *Holt*, 293 Fed. 155 (C. C. A. 8th), cert. den. 264 U. S. 584 the Court said:

> "But conceding that an interpretation of the bare words of the act does not lead us to a clear understanding of their meaning and the true legislative intent, and that they need construction . . . no construction ought, or in justice can, be placed on them that would inevitably lead to absurd or impractical results."

Yet impractical and naive as the Government's suggestions with respect to inquiry are, it offers no other ideas as to how a claimant could comply with the interpreted requirement of reasonable investigation. There are no other investigations a finance company can make of the reality of the transaction at the time it is asked to purchase the contract. It cannot—even if it were practicable financially—employ investigators to determine who is using the car, because when it is asked to pass the credit the car is then in possession of the dealer and it must pass the credit immediately. The great flow of cars in commerce calls for immediate decisions on financing. The Circuit Court of Appeals for the Fourth Circuit in its decision in *C. I. T., Corporation* v. *United States*, 89 F. (2d) 977 observed,

> "Indeed if lienors who accept from dealers assignments of conditional sales contracts immediately after the execution of the papers are excluded from the benefits of the act, the purposes of the act to a large extent will be frustrated. It is common practice for automobile dealers promptly to assign conditional sales contracts to finance companies in order to secure at once the proceeds of the sales."

and the District Court in the instant case quoted this statement. R. 11. Even the Government does not advance the

suggestion that a finance company must, to comply with the statute, employ investigators to supervise the *use* of the car. Yet the claimant knows of no other means to employ in order to gain the benefit of the statute in cases like the instant one, should the Government's interpretation be adopted.

It is impossible to conceive that Congress intended to lay upon lienors this burden which is obviously insuperable. It did not intend to put them in the position of the liquor law enforcement agencies. *United States* v. *C. I. T. Corporation,* 93 F. (2d) 469 (C. C. A. 2nd).

A fortiori, the Government's stricter interpretation of the statute as containing an absolute requirement that the real purchaser be investigated would nullify it. Consequently, its interpretation should be rejected. It has always been an accepted canon of statutory construction that the effects and consequences of a given construction will be taken into consideration. *Carnill* v. *McCaughn,* 30 F. (2d) 696 (E. D. Pa.) aff'd 43 F. (2d) 69 cert. den. 283 U. S. 825.

On the other hand, it is more than doubtful whether the Government's interpretation of the statute would really aid in the collection of the revenue by breaking up the illicit liquor traffic. The Government implies (Government's supplemental brief, p. 8) that the claimant's interpretation of the statute enlarges opportunities to defraud the revenue.

This conclusion is unwarranted. Since the claimant cannot investigate persons of whom it has no knowledge, and cannot obtain knowledge, straw purchasers will get cars, however the statute is interpreted. The only effective result of the Government's interpretation of the statute will be to deprive innocent lienors of their property interests. Such a result, it is submitted, serves no useful or

practical purpose of the Government in the collection of its revenue, and is directly opposed to the intention of the statute.

IV.

The discretion of the District Courts will prevent remissions of forfeiture in suitable cases.

It should be noted that the construction contended for by claimant herein does not open the way to any chicanery by lienors. In deciding that lienors are only required to investigate persons known to them by the terms of subdivisions (2) and (3) of Section 204 (b), this Court will not deprive District Courts of the discretion given them under the statute in the remission of forfeitures. Thus in cases where the claimant has technically complied with the conditions precedent of the statute but has been guilty of any bad faith, or negligence amounting to bad faith, the District Courts can still in their discretion refuse to remit the forfeiture. For example, in *United States* v. *One Ford Coach Automobile,* 20 F. Supp. 44 (W. D. Va.), the straw purchaser had made false statements in his credit application which, if checked by the finance company, might have revealed the true state of affairs. In this case remission was denied.

Again in *C. I. T. Corporation* v. *United States,* 86 F. (2d) 311 (C. C. A. 4th) the purchaser had failed to answer in his application a question whether he intended to use the car for the transportation of liquor. The Circuit Court of Appeals for the Fourth Circuit held that the District Court had properly refused a remission of the forfeiture under the circumstances.

These cases are an example of the proper working of the statute here involved. It has not been contended by this claimant that a mere technical compliance with the terms of the statute should entitle a lienor to a remission as of right. The attendant facts and circumstances were intended by the statute to be weighed by the District Court which is given discretion to remit or mitigate the forfeiture.

Consequently, it is submitted that the interpretation contended for by claimant will not, as the Government assumes (Government's supplemental brief, p. 8), enlarge opportunities to defraud the revenue. The Government points out in its argument that except for the statute in question lienors would have no standing in court. Since, however, Congress intended in enacting the statute to give them a standing in court, this Court is urged not to deprive them of the benefits of the statute by a construction thereof which would result in a practical nullification.

Conclusion.

For the reasons stated in this brief and in the claimant's principal brief, the judgment of the courts below should be affirmed.

Respectfully submitted,

DUANE R. DILLS,
EUGENE E. HEALON,
Counsel for Claimant,
New York City.

FLORENCE E. GOLDMAN,
Of Counsel.

No. 10

In the Supreme Court of the United States

OCTOBER TERM, 1938

THE UNITED STATES OF AMERICA, PETITIONER

v.

ONE 1936 MODEL FORD V-8 DE LUXE COACH, MOTOR NO. 18-3306511, COMMERCIAL CREDIT COMPANY, CLAIMANT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION BY THE UNITED STATES FOR A REHEARING BEFORE A FULL BENCH, AND MOTION THAT THE ISSUANCE OF THIS COURT'S MANDATE BE STAYED UNTIL THE FINAL DISPOSITION OF THE CASE

INDEX

CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 10

THE UNITED STATES OF AMERICA, PETITIONER

v.

ONE 1936 MODEL FORD V–8 DE LUXE COACH, MOTOR NO. 18–3306511, COMMERCIAL CREDIT COMPANY, CLAIMANT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION BY THE UNITED STATES FOR A REHEARING BEFORE A FULL BENCH, AND MOTION THAT THE ISSUANCE OF THIS COURT'S MANDATE BE STAYED UNTIL THE FINAL DISPOSITION OF THE CASE

Comes now the petitioner, the United States of America, by the Solicitor General, and respectfully prays for a rehearing of this case before a full bench.

In this case the claimant finance company, proceeding under Section 204 (a), Title II, of the Liquor Law Repeal and Enforcement Act of August 27, 1935, c. 740, 49 Stat. 872, 878 (U. S. C., Supp. III, Title 27, Sec. 40a), sought a remission

of the forfeiture of an automobile seized for a violation of the internal revenue laws relating to liquor, and the case presents the question of the extent of the investigation which, under subsection (b) of Section 204, a claimant is required to make where a straw-purchaser transaction is involved before his claim for remission may be allowed, as well as the question whether the claimant herein met other conditions precedent to a remission of the forfeiture provided in the subsection.

The Circuit Court of Appeals for the Fourth Circuit held that the claimant had complied with the conditions precedent to a remission of forfeiture enumerated in the statute. This Court, on petition of the Government, granted a writ of certiorari on April 24, 1938. The order granting the writ (303 U. S. 633) states that "Mr. Justice Butler and Mr. Justice Stone took no part in the consideration or decision of this application."

The Government's petition was based upon the grounds that the decision of the Circuit Court of Appeals was in direct conflict with the decision of the Circuit Court of Appeals for the Eighth Circuit in *Federal Motor Finance* v. *United States*, 88 F. (2d) 90, and that the court below had erroneously decided an important question of Federal law which had not been but should be settled by this Court. It was pointed out that the question involved was pending before a number of the lower courts and that a proper construction of the statute

was of importance in preventing frauds upon the revenue.

After argument, this Court on October 17, 1938, by a *per curiam* decision, affirmed the judgment of the Circuit Court of Appeals for the Fourth Circuit by an equally divided Court, six members participating in the decision.

Great confusion has marked the construction by the lower courts of the remission provisions of the statute where they have been invoked by finance companies in straw-purchaser transactions. The Circuit Court of Appeals for the Eighth Circuit in the *Federal Motor Finance* case in affirming a decision of the District Court (13 F. Supp. 619, 620) had held, in effect, that an investigation similar to that made by the finance company in the instant case did not meet the requirements of the remission provisions and that there was therefore no occasion to determine whether a remission should be granted in the exercise of judicial discretion. The Circuit Court of Appeals for the Fourth Circuit in the instant case and in *C. I. T. Corp.* v. *United States*, 89 F. (2d) 971, had held directly to the contrary. Several District Courts, assuming *arguendo* that the conditions of the statute had been met or without making any such determination, had denied remissions of forfeitures in straw-purchaser cases by resting their decisions upon the discretionary power of the court. *United States* v. *One 1935 Chevrolet Coupe*, 13 F. Supp. 986 (Me.); *United States* v.

One 1935 Ford Coupe, 17 F. Supp. 331 (Me.); *United States* v. *One Ford Coach*, 20 F. Supp. 44 (W. D. Va.). See also *United States* v. *One Ford Coupe, Pa. License 831-H-5*, 21 F. Supp. 156 (Del.). In another straw-purchaser case the District Court, assuming that the conditions of the statute had been met, granted a remission of the forfeiture in the exercise of discretion. *United States* v. *One 1936 Model Ford De Luxe Tudor Auto.*, 22 F. Supp. 507 (N. D. Ga.).

The affirmance by an equal division of this Court of the judgment of the Circuit Court of Appeals for the Fourth Circuit in the instant case does not eliminate the prior confusion. While the Circuit Court of Appeals for the Fourth Circuit and the various District Courts in that Circuit will decide future cases in the light of this Court's affirmance, the courts in the Eighth Circuit will undoubtedly abide by the decision of the Circuit Court of Appeals for that Circuit in the *Federal Motor Finance* case, and the courts in other circuits will feel themselves free to adopt such a construction of the statute as they deem correct. In *Hertz* v. *Woodman*, 218 U. S. 205, 213–214, this Court said:

> Under the precedents of this court, and as seems justified by reason as well as by authority, an affirmance by an equally divided court is as between the parties a conclusive determination and adjudication of the matter adjudged, but the principles of law involved not having been agreed upon by a

majority of the court sitting prevents the case from becoming an authority for the determination of other cases, either in this or in inferior courts.

It is therefore evident that the proper construction of the statute involved in this case will not be set at rest until a final and decisive ruling is made by this Court. In view of the conflicting decisions the question should ultimately be decided by this Court and, unless it is decided in this case, the resolving of the question will be delayed until another case can be carried through the lower courts and a decision rendered by this Court. We are advised that there is not pending in any Circuit Court of Appeals at the present time a case presenting the question.

Moreover, the effect of the affirmance by an equally divided court of the judgment below in the instant case will result in an increase of contested litigation in straw-purchaser cases by the filing of petitions for remission by finance companies. In each of these cases the Government will be compelled to continue to litigate the question as to the proper construction of the statute until that question is decisively settled by this Court.

This Court has not infrequently granted a rehearing before a full bench following a decision by an equally divided court. An outstanding example is, of course, *Pollock* v. *Farmers' Loan & Trust Co.*, 158 U. S. 601. The petition for rehearing in that case, which is printed in full at 158 U. S. 602–

605, cites several similar instances in the earlier history of the Court. Other instances where such a petition was granted will be found in *The Selma, Rome & Dalton R. R. Co.* v. *United States*, 122 U. S. 636, 637, 139 U. S. 560; *United States* v. *Sischo*, 260 U. S. 697–698, 701, 262 U. S. 165; and *Railroad Commission of California* v. *Pac. Gas & Electric Co.*, 301 U. S. 669, 302 U. S. 771, 388.[1]

In all of these cases, vacancies on the bench resulting from causes other than disqualification contributed to the affirmances by an equally divided court. Moreover, the granting of the petition for rehearing before a full bench occurred in two of the cases enumerated where the questions involved were simply questions of statutory construction and not constitutional questions. In *The Selma Rome & Dalton R. R.* case the question presented was the construction of an appropriation Act relating to claims of certain mail contractors. Upon reargument the judgment of the Court of Claims was

[1] In *W. H. H. Chamberlin, Inc.* v. *Andrews, Industrial Commissioner of New York*, and two companion cases, 299 U. S. 515, which involved the validity of the New York Unemployment Insurance law, the judgments of the Supreme Court of New York were affirmed by an equally divided court, Mr. Justice Stone being absent from the bench at the time of argument and decision because of illness. A petition for rehearing before a full bench was filed, but action upon the petition was delayed until May 24, 1937, the same day that this Court in *Carmichael* v. *Southern Coal Co.*, 301 U. S. 495, upheld the constitutionality of the Alabama Unemployment Compensation law. The petition was then denied, 301 U. S. 714.

unanimously affirmed by this Court. The other case involving a question of statutory construction was *United States* v. *Sischo*. In that case, in which this Court, upon reargument, unanimously reversed the judgment below, the question presented was whether a statute designed to aid in the prevention of smuggling applied to prohibited merchandise, i. e., smoking opium. The granting of a rehearing before a full bench in that case is of especial pertinence here, since the statute there interpreted, like the statute here in question, was one designed to aid in the prevention of frauds upon the revenue, and the basis for seeking a rehearing in that case was, as in the instant case, the accentuation by the equal division of this Court of the confusion which had theretofore existed as to the proper interpretation of the statute. The analogies between the two cases are particularly persuasive for the granting of the petition for rehearing in the present case.

While a full bench cannot at this time be obtained because of the vacancy on the Court, the petition for rehearing may nevertheless be granted now and the case restored to the docket for reargument—reargument, however, being postponed until a successor to Mr. Justice Cardozo is appointed and has qualified. This practice is sanctioned by that followed in several of the prior cases. In *Home Insurance Co.* v. *New York*, 119 U. S. 129, 148 (referred to in the petition for rehearing filed in *Pollock* v. *Farmers' Loan & Trust Co., supra*), the petition for rehearing was granted, the prior judgment was rescinded

and annulled, and the case restored to its place on the docket on February 7, 1887, at the October Term, 1886 (122 U. S. 636), when one of the nine Justices, who shortly thereafter died, was incapacitated by illness. The case, however, was not reargued until March 18–19, 1890, at the October Term, 1889, when a full bench was available (134 U. S. 594). An identical situation was presented in *The Selma Rome & Dalton R. R. Co.* v. *United States,* 122 U. S. 636, 637, 139 U. S. 560, except that the petition was granted on March 28, 1887, and the reargument had on March 25–26, 1891. In *United States* v. *Sischo* a full bench was not available to hear the case when the petition for rehearing was granted on November 13, 1922 (260 U. S. 701), and reargument was not had until April 23, 1923, when such a bench existed (262 U. S. 165). In *R. R. Comm'n* v. *Pac. Gas & Elec. Co.* a full bench was not available when the petition for rehearing was filed on June 23, 1937, Mr. Justice Van Devanter having retired on June 2, 1937. When the petition for rehearing was granted on October 11, 1937 (302 U. S. 771), and when the case was reargued on November 11, 1937 (302 U. S. 388), a full bench existed, Mr. Justice Black having taken the oath of office on August 19, 1937.

As the mandate of this Court will issue under Rule 34 on Friday, November 11, 1938, it is respectfully moved that the issuance of such mandate be stayed until the final disposition of the case. If the automobile involved were turned over

to the finance company pending final action by this Court, not only would it appear that the District Court's jurisdiction over the *res* would be disturbed but it might be difficult, if not impossible, for the Government to regain possession of the car, in the event it should ultimately secure a reversal, if the car in the meantime had been sold by the finance company.

Respectfully submitted.

ROBERT H. JACKSON,
Solicitor General.
BRIEN MCMAHON,
Assistant Attorney General.
GORDON DEAN,
Special Assistant to the Attorney General.
MAHLON D. KIEFER,
W. MARVIN SMITH,
Attorneys.

We certify that this petition is presented in good faith and not for delay.

ROBERT H. JACKSON,
Solicitor General.
BRIEN MCMAHON,
Assistant Attorney General.
GORDON DEAN,
Special Assistant to the Attorney General.
MAHLON D. KIEFER,
W. MARVIN SMITH,
Attorneys.

NOVEMBER 1938.

U. S. GOVERNMENT PRINTING OFFICE 1938

SUPREME COURT OF THE UNITED STATES.

Nos. 10 and 627.—October Term, 1938.

United States of America, *vs.* One 1936 Model Ford V-8 De Luxe Coach, Motor No. 18-3306511, Commercial Credit Company, Claimant.	Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.
United States of America, *vs.* Automobile Financing, Inc.	Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[May 22, 1939.]

Mr. Justice McReynolds delivered the opinion of the Court.

In each of these causes the District Court, proceeding under the "Liquor Law Repeal and Enforcement Act" of August 27, 1935 (c. 740, 49 Stat. 872, 878, Title 27 U. S. C. A. sec. 40a), mitigated the forfeiture of an automobile seized for unlawful transportation of distilled spirits upon which the federal tax had not been paid. (One was seized December 3, 1936; the other, March 15, 1937. The forfeiture was decreed in a proceeding based upon section 3450 R. S. (Title 26 U. S. C. A. sec. 1441). The Circuit Courts of Appeals rightly approved and their judgments must be affirmed.

The facts, undispute, are essentially alike in both causes. The points of law are the same. A statement based on Record No. 10 will suffice.

The Repeal Enforcement Act provides—

Sec. 204. (a) Whenever, in any proceeding in court for the forfeiture, under the internal-revenue laws, of any vehicle or aircraft seized for a violation of the internal-revenue laws relating to liquors, such forfeiture is decreed, the court shall have exclusive jurisdiction to remit or mitigate the forfeiture.

(b) In any such proceeding the court shall not allow the claim of any claimant for remission or mitigation unless and until he proves (1) that he has an interest in such vehicle or aircraft, as

owner or otherwise, which he acquired in good faith, (2) that he had at no time any knowledge or reason to believe that it was being or would be used in the violation of laws of the United States or of any State relating to liquor, and (3) if it appears that the interest asserted by the claimant arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating laws of the United States or of any State relating to liquor has a right with respect to such vehicle or aircraft, that, before such claimant acquired his interest, or such other person acquired his right under such contract or agreement, whichever occurred later, the claimant, his officer or agent, was informed in answer to his inquiry, at the headquarters of the sheriff, chief of police, principal Federal internal-revenue officer engaged in the enforcement of the liquor laws, or other principal local or Federal law-enforcement officer of the locality in which such other person acquired his right under such contract or agreement, of the locality in which such other person then resided, and of each locality in which the claimant has made any other inquiry as to the character or financial standing of such other person, that such other person had no such record or reputation.

The following findings by the District Court, it is agreed, correctly set out "the facts in this case"—

The Ford automobile in question was sold by the Greenville Auto Sales, Incorporated (the dealer) October 3, 1936, through its agent, Elrod, to Guy Walker, who in part payment exchanged an old car paid for by him, but registered in his wife's name. He was given terms for payment under a conditional sales contract, drawn by an agent of the dealer, in the name of his brother, Paul Walker, who formally executed the agreement. Guy Walker had the conditional sales contract drawn and executed in the name of his brother in order to place the title "where his wife could not reach it". Paul Walker had no interest in the transaction except to comply with his brother's request. Guy Walker made the transaction with the dealer. He selected the car, made the agreement and handled the transaction himself. Paul Walker drove the car from the dealer's place of business. Guy Walker at the time, and for two or three weeks after the purchase, was living at his brother's house. Only one payment was made on the conditional sales contract before the seizure, and that by Guy Walker to the dealer.

It was admitted that Guy Walker had a previous record and reputation for violating both state and federal laws relating to liquor. Paul Walker was convicted of violating the National

Prohibition Act in 1929, and was duly sentenced therefor, but his record and reputation since serving the sentence were good.

On the date when the sale was consummated the dealer submitted the contract to the Commercial Credit Company, the claimant here, who accepted by telephone, and subsequently on October 5th, in the usual course of business the dealer assigned the contract to the claimant and received a check therefor.

The claimant before accepting assignment of the sales contract made an investigation of Paul Walker by inquiring at the headquarters of the Sheriff of Greenville County, and at the headquarters of the Chief of Police of Greenville, the County and City where the interest was acquired and the locality where Paul Walker resided, as to his record and reputation for violation of the liquor law. Information was received from these offices that he had no such record or reputation. Information was given, however, from the Sheriff's office that Guy Walker had both record and reputation as violator of state and federal laws relating to liquor. No inquiry or investigation was made at the headquarters of the principal Federal internal-revenue officer engaged in the enforcement of the liquor laws in that locality, or at the headquarters of any other principal local or federal law enforcement officer of the locality as to Paul Walker, and no inquiry or investigation whatsoever was made of Guy Walker, the admitted real owner and purchaser of the automobile.

The claimant had Paul Walker investigated in August, 1936, by the Business Service Bureau of Greenville, South Carolina, in connection with the purchase of a refrigerator. No investigation at that time was made as to his reputation or record for violating the liquor laws; the investigation did disclose that he had a good reputation in the community where he lived, and this was the reputation given him by his employer at that time.

The claimant purchased the conditional sales contract in good faith, believing that Paul Walker was the purchaser and owner of the automobile. It had no knowledge, information or suspicion of the true facts until after the automobile had been seized by federal officers.

Petitioner challenges the judgment below because of claimant's failure to establish complianee with the conditions imposed by subsection (b) section 204. Especially because claimant failed to

show that it had no reason to believe the automobile was being used or would be used to violate the liquor laws; also because it made no adequate inquiry concerning the record and reputation of the real purchaser—Guy Walker.

Respondent's interest in the automobile is not questioned. It "purchased the conditional sales contract in good faith, believing that Paul Walker was the purchaser and owner of the automobile. It had no knowledge, information or suspicion of the true facts until after the automobile had been seized." This is enough to show compliance with sub-section (b)(1). There was an interest acquired in good faith.

After investigation of the record and reputation of Paul Walker, followed by favorable reports, and believing him to be purchaser and owner of the automobile, claimant in good faith acquired the sales contract. It had no knowledge, information or suspicion that Paul Walker was only a "straw" purchaser. This is enough to show compliance with sub-section (b)(2). The suggestion that since respondent knew automobiles were frequently used for violation of liquor laws it therefore had reason to believe that the one in question would be so used is not well founded. The findings positively affirm that it entertained no such belief or suspicion.

The difficult phrasing of sub-section (b)(3) has produced divergent views concerning its meaning.

In *Federal Motor Finance* v. *United States*, 88 F. (2d) 90, 93, the Circuit Courts of Appeals Eighth Circuit said—

"We think the fair intendment of the language of subsection (3) concerning remission of forfeiture is that the appellant could not rely entirely upon a course of business whereby it acquired an interest in the car so nearly approximating the total value thereof without taking care to ascertain who the real owner was in possession of and using the car."

In the causes now before us (93 F. (2d) 771, 773; 99 F. (2d) 498, 500), the Circuit Court of Appeals accepted the view that—

"The involved language of subsection (b) (3) of the act does permit the possible interpretation that the lienor is charged with the duty of making inquiry as to every one, bearing a bad reputation or record, who may have a right under the contract of sale, whether or not it appears on the face of the instrument. See Federal Motor Finance v. United States, 8 Cir., 88 F. 2d 90. But in our view Congress did not intend to impose upon the lienor the

obligation to ascertain at his peril the identity of every person having an interest in the property and to make inquiry of the law enforcement officers as to the previous record and reputation of every such person, unless from the documents themselves or other surrounding circumstances the lienor possesses information which would lead a reasonably prudent and law-abiding person to make a further investigation."

See also *C. I. T. Corporation* v. *United States,* (Fourth Circuit) 86 F. (2d) 311, and *United States* v. *C. I. T. Corporation,* (Second Circuit) 93 F. (2d) 469.

Counsel for petitioner now maintain: "That under the language of the statute [(b)(3)] the claimant is required to investigate the real purchaser at its peril and that if it fails to do so, as between it and the Government, the claimant assumes the risk of fraud perpetrated upon it by the dealer and the bootlegger. In any event, the claimant should have been required to show that it at least made a reasonable effort to ascertain who the real purchaser and user of the car was so that he could be investigated as required by the statute."

Manifestly, section 204 is a remedial measure. It empowers the courts, exercising sound discretion, to afford relief to innocent parties having interests in condemned property where the claim is reasonable and just. Its primary purpose is not to protect the revenues; but this is proper matter for consideration whenever remission is sought. The section must be liberally construed to carry out the objective. The point to be sought is the intent of the law-making powers. Forfeitures are not favored; they should be enforced only when within both letter and spirit of the law. *Farmers', etc. National Bank* v. *Dearing,* 91 U. S. 29, 33-35. If any claimant has been negligent or in good conscience ought not be relieved, the court should deny his application.

Consideration of the statutory provisions relative to remissions prior to section 204 and the circumstances of its adoption will enlighten the purpose entertained by Congress.

Sections 3450 and 3453 Revised Statutes (Title 26 U. S. C. A. secs. 1441, 1620-1621)—derived from Acts June 30, 1864 and July 13, 1866—provide that whenever any commodity in respect of which a tax is imposed, is removed with intent to defraud the United States, it shall be forfeited "and every vessel, boat, cart, carriage,

or other conveyance whatsoever, and all horses or other animals, and all things used in the removal or for the deposit or concealment thereof, respectively, shall be forfeited." "The proceedings to enforce such forfeitures shall be in the nature of a proceeding in rem in the circuit court or district court of the United States for the district where such seizure is made."[1]

Sections 3460 and 3461 (Title 26 U. S. C. A. sec. 1624—derived from Acts July 13, 1866 and June 6, 1872—provide that when goods, wares, or merchandise seized as subjects of forfeiture, do not exceed $500 in value, they may be restored to the claimant upon the execution of a bond and this shall be delivered to the District Attorney for proper proceedings; if no bond, the articles shall be sold and the proceeds paid into the Treasury. Within a year any claimant may apply to the Secretary for remission which may be granted "upon satisfactory proof, to be furnished in such manner as he shall prescribe: *Provided*, That it

---

[1] R. S. section 3450 (Act July 13; 1866, c. 184, sec. 14, 14 Stat. 98, 151; 26 U. S. C. A. sec. 1441)—

(a) Every person who removes, deposits, or conceals, or is concerned in removing, depositing, or concealing any goods or commodities for or in respect whereof any tax is imposed, with intent to defraud the United States of such tax on any part thereof, shall be liable to a fine or penalty of not more than $500.

(3) Every vessel, boat, cart, carriage, or other conveyance whatsoever, and all horses or other animals, and all things used in the removal or for the deposit or concealment thereof, respectively, shall be forfeited.

[This section was amended by Act June 26, 1936 (c. 830, Title III, sec. 325, 49 Stat. 1939, 1955) which changed the provision for $500 penalty to a "fine of not more than $5,000 or be imprisoned for not more than three years, or both."]

Revised Statutes section 3453 (Act June 30, 1864, c. 173, sec. 48, 13 Stat. 223, 240; Act July 13, 1866, c. 184, sec. 9, 14 Stat. 98, 111; 26 U. S. C. A. secs. 1620-1621)—

All goods, wares, merchandise, articles, or objects, on which taxes are imposed, which shall be found in the possession, or custody, or within the control of any person, for the purpose of being sold or removed by him in fraud of the internal-revenue laws, or with design to avoid payment of said taxes, may be seized by the collector or deputy collector of the proper district, or by such other collector or deputy collector as may be specially authorized by the Commissioner of Internal Revenue for that purpose, and shall be forfeited to the United States. And all raw materials found in the possession of any person intending to manufacture the same into articles of a kind subject to tax for the purpose of fraudulently selling such manufactured articles, or with design to evade the payment of said tax; and all tools, implements, instruments, and personal property whatsoever, in the place or building, or within any yard or inclosure where such articles or raw materials are found, may also be seized by any collector or deputy collector, as aforesaid, and shall be forfeited as aforesaid. The proceedings to enforce such forfeitures shall be in the nature of a proceeding in rem in the circuit court or district court of the United States for the district where such seizure is made.

shall be satisfactorily shown . . . that the said forfeiture was incurred without willful negligence or any intention of fraud on the part of the owner of said property."[2]

Where the value exceeds $500 or bond is given, forfeiture must be sought in court through a libel in rem. *United States* v. *Two*

---

[2] Revised Statutes sections 3460 and 3461 (Act July 13, 1866, c. 184, sec. 63, 14 Stat. 98, 169; Act June 6, 1872, c. 315, sec. 40, 17 Stat. 230, 257; 26 U. S. C. A. sec. 1624—

Sec. 3460. In all cases of seizure of any goods, wares, or merchandise, as being subject to forfeiture under any provision of the internal-revenue laws, which, in the opinion of the collector or deputy collector making the seizure, are of the appraised value of five hundred dollars or less, the said collector or deputy collector shall, except in cases otherwise provided, proceed as follows:

Second. If the said goods are found by the said appraisers to be of the value of five hundred dollars or less, the said collector or deputy collector shall publish a notice, for three weeks, in some newspaper of the district where the seizure was made, describing the articles, and stating the time, place, and cause of their seizure, and requiring any person claiming them to appear and make such claim within thirty days from the date of the first publication of such notice.

Third. Any person claiming the goods, wares, or merchandise so seized, within the time specified in the notice, may file with the said collector or deputy collector a claim, stating his interest in the articles seized, and may execute a bond to the United States in the penal sum of two hundred and fifty dollars, with sureties to be approved by the said collector or deputy collector, conditioned that, in case of condemnation of the articles so seized, the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation; and upon delivery of such bond to the collector or deputy collector, he shall transmit the same, with the duplicate list or description of the goods seized, to the United States district attorney for the district, and said attorney shall proceed thereon in the ordinary manner prescribed by law.

Fourth. If no claim is interposed and no bond is given within the time above specified, the collector or deputy collector, as the case may be, shall give ten days' notice of the sale of the goods, wares, or merchandise by publication, and, at the time and place specified in the notice, shall sell the articles so seized at public auction, and, after deducting the expense of appraisement and sale, he shall deposit the proceeds to the credit of the Secretary of the Treasury.

Sec. 3461. Within one year after the sale of any goods, wares, or merchandise, as provided in the preceding section, any person claiming to be interested in the property sold may apply to the Secretary of the Treasury for a remission of the forfeiture thereof, or any part thereof, and a restoration of the proceeds of the sale; and the said Secretary may grant the same upon satisfactory proof, to be furnished in such manner as he shall prescribe: *Provided*, That it shall be satisfactorily shown that the applicant, at the time of the seizure and sale of the said property, and during the intervening time, was absent, out of the United States, or in such circumstances as prevented him from knowing of the seizure, and that he did not know of the same; and also that the said forfeiture was incurred without willful negligence or any intention of fraud on the part of the owner of said property. If no application for such restoration is made within one year, as hereinbefore prescribed, the Secretary of the Treasury shall, at the expiration of the said time, cause the proceeds of the sale of the said property to be distributed according to law, as in the case of goods, wares, or merchandise condemned and sold pursuant to the decree of a competent court.

Bay Mules, Etc., 36 Fed. 84; *United States* v. *Mincey*, 254 Fed. 287; *Logan* v. *United States*, 260 Fed. 746; *United States* v. *One Bay Horse*, 270 Fed. 590.

Section 3229 Revised Statutes (Act July 20, 1868, c. 186, sec. 102, 15 Stat. 125, 166; 26 U. S. C. A. sec. 1661) provides—

The Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal-revenue laws instead of commencing suit thereon; and, with the advice and consent of the said Secretary and the recommendation of the Attorney-General, he may compromise any such case after a suit thereon has been commenced. Whenever a compromise is made in any case there shall be placed on file in the office of the Commissioner the opinion of the Solicitor of Internal Revenue, or of the officer acting as such, with his reasons therefor, with a statement of the amount of tax assessed, the amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and the amount actually paid in accordance with the terms of the compromise.
(Amended, Acts February 26, 1926, c. 27, sec. 1201, 44 Stat. 9, 126; May 10, 1934, c. 277, sec. 512(b), 48 Stat. 680, 759; May 28, 1938, c. 289, sec. 815, 52 Stat. 447, 578.)

Wilson Motor Co. v. *United States* (Ninth Circuit) 84 F. (2d) 630, 632, states—"The government's brief advises that prior to the Act of August 27, 1935, the procedure of the government to afford relief to these innocent owners was under the provisions of compromise powers given the Attorney General and the Treasury under section 1661, 26 U. S. C. A."

In connection with the sections referred to above the United States Code Annotated points to their origin and history.

The National Prohibtion Act (October 28, 1919, c. 85, Title II, sec. 26, 41 Stat. 305, 315, Title 27 U. S. C. A. sec. 40) provided that "whenever intoxicating liquors transported or possessed illegally shall be seized by an officer he shall take possession of the vehicle and team or automobile, boat, air or water craft, or any other conveyance, and shall arrest any person in charge thereof." "The person arrested shall be proceeded against but the vehicle or conveyance shall be returned upon execution of a bond. Upon his conviction the court shall order the liquor destroyed "and unless good cause to the contrary is shown by the owner, shall order a sale by

public auction of the property seized."[3] See *Richbourg Motor Co. v. United States*, 281 U. S. 528. This was repealed by The Repeal and Enforcement Act, *supra*.

The Act of September 21, 1922, (c. 356, sec. 618, 42 Stat. 858, 987) provides:—

Whenever any person interested in any vessel, vehicle, merchandise, or baggage seized under the provisions of this Act, or who has incurred, or is alleged to have incurred, any fine or penalty thereunder, files with the Secretary of the Treasury if under the customs laws, and with the Secretary of Commerce if under the navigation laws, before the sale of such vessel, vehicle, merchandise, or baggage a petition for the remission or mitigation of such fine, penalty, or forfeiture, the Secretary of the Treasury, or the Secretary of Commerce, if he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just, or order discontinuance of any prosecution relating thereto.

[Reenacted by Act July 17, 1930, c. 497, sec. 618, 46 Stat. 590, 757; 19 U. S. C. A. sec. 1618.]

---

[3] When the commissioner, his assistants, inspectors, or any officer of the law shall discover any person in the act of transporting in violation of the law, intoxicating liquors in any wagon, buggy, automobile, water or air craft, or other vehicle, it shall be his duty to seize any and all intoxicating liquors found therein being transported contrary to law. Whenever intoxicating liquors transported or possessed illegally shall be seized by an officer he shall take possession of the vehicle and team or automobile, boat, air or water craft, or any other conveyance, and shall arrest any person in charge thereof. Such officer shall at once proceed against the person arrested under the provisions of this title in any court having competent jurisdiction; but the said vehicle or conveyance shall be returned to the owner upon execution by him of a good and valid bond, with sufficient sureties, in a sum double the value of the property, which said bond shall be approved by said officer and shall be conditioned to return said property to the custody of said officer on the day of trial to abide the judgment of the court. The court upon conviction of the person so arrested shall order the liquor destroyed, and unless good cause to the contrary is shown by the owner, shall order a sale by public auction of the property seized, and the officer making the sale, after deducting the expenses of keeping the property, the fee for the seizure, and the cost of the sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise at said hearing or in other proceeding brought for said purpose, as being bona fide and as having been created without the lienor having any notice that the carrying vehicle was being used or was to be used for illegal transportation of liquor, and shall pay the balance of the proceeds into the Treasury of the United States as miscellaneous receipts. All liens against property sold under the provisions of this section shall be transferred from the property to the proceeds of the sale of the property.

The Act May 29, 1928 (c. 852, sec. 709, 45 Stat. 791, 882, 26 U. S. C. A. sec. 1626) extended "the provisions of law applicable to the remission or mitigation by the Secretary of the Treasury of forfeitures under the customs laws . . . to forfeitures incurred or alleged to have been incurred, before or after the enactment of this Act, under the internal-revenue laws."

In the situation disclosed by the foregoing summary, Congress came to consider the Act of August 27, 1935. The Judiciary Committees of Senate and House made reports (Senate Report No. 1330, House Report No. 1601, 74th Cong., 1st Session). In each the paragraphs relative to section 204(a) and (b) are the same in substance.[4]

---

[4] House Reports, Vol. 4, 74th Congress, 1st Session, 1935, Report No. 1601, p. 3—

Section 204(a) of section 204 provides that in any court proceeding for the forfeiture under the internal-revenue laws of any vehicle or aircraft seized for a violation of the internal-revenue laws relating to liquor, the court shall, upon decree of forfeiture, have exclusive jurisdiction to remit or mitigate the forfeiture. At the present time, the court has authority only to decree the forfeiture, and remission or mitigation is dependent upon administrative action. Section 204 extends to the court which determines whether the vehicle or aircraft shall be forfeited by reason of having been used in the violation of internal-revenue laws relating to liquor, the power to determine whether the claim of any person having an interest in the vehicle or aircraft should be allowed after forfeiture. Thus, in all cases where the value of the seized property exceeds $500, and in all cases where the value is $500 or less, but a bond is posted in order to bring the forfeiture proceeding into court, the court will have exclusive jurisdiction to remit or mitigate the forfeiture. In the event that a bond is not filed in cases where the property is of the value of $500 or less, the power to remit or mitigate will remain in the Secretary of the Treasury.

Certain standards are given to the court to guide it in this determination. Thus, under subsection (b), the claimant must prove that he acquired his interest in good faith, that he had no knowledge or reason to believe that the vehicle or aircraft was being or would be used in violating Federal or State liquor laws, and that, if his interest arises out of, or is subject to, any agreement under which any person having a record or reputation for violating Federal or State liquor laws has a right with respect to the vehicle or aircraft, the claimant, before he acquired his interest, or before the other person acquired his right, which ever of these events occurred later, inquired of the law enforcement officers in the locality where such other person acquired his right, of the locality in which such other person then resided, and of each locality where the claimant made inquiry as to the character or credit standing of such other person, whether the other person had such a record or reputation, and was informed he had not. This last requirement is predicated upon the recognition of the "bootleg hazard" as an element to be considered in investigating a person as a credit risk. As a matter of sound business practice, automobile dealers, finance companies, and prospective lienholders on automobiles examine records, and make inquiry of references and credit rating agencies as to the owner's or prospective purchaser's reputation for paying his debts and his ability to do so. This subsection merely requires that in the making of such inquiry, the "bootleg hazard" also be examined as one aspect of the credit risk.

A representative of the Treasury Department made a statement to the Senate Judiciary Committee. An extract from this appears in the margin.[5]

A rearrangement of the words of sub-section (b)(3) will enlighten its meaning—

The court shall not allow the [request]—claim—of any claimant for remission or mitigation, if it appears that the interest asserted by [him]—the claimant—arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating laws of the United States or of any State relating to liquor has a right with respect to such vehicle or aircraft, *unless and until* he [the claimant] proves that before [he]—such claimant—acquired his interest, or such other person acquired his right under such contract or agreement, whichever occurred later, [he]—the claimant—his officer or agent, was informed in answer to his inquiry, at [certain headquarters specified in the alternative] as to the character or financial standing of such other person, that such other person had no such record or reputation.

If the words of section 204(b)(3) be taken literally, without regard to history or purpose of the enactment, they inhibit remission by the court unless one who claims an interest made actual inquiry concerning every person with record or reputation for violating the liquor laws who in fact (although wholly unsuspected) had acquired some right to the vehicle. There would be absolute forfeiture although the claimant acquired his interest in the utmost

[5] Senate Committee Hearings, 1935, Vol. 495, No. 4, p. 13—

Section 204 . . . relates to proceedings in court for the forfeiture of vehicles or aircraft seized for violations of internal-revenue laws. At the present time, claimants of interests in vehicles or aircraft that have been seized and forfeited for violation of internal-revenue laws, petition the Secretary of the Treasury for the remission or mitigation of the forfeiture, and the Secretary, under the law, requires the person claiming to have an innocent interest to show that he had no knowledge of the unlawful use of the vehicle or aircraft. What this section will do, in the case of any court proceeding for the forfeiture of vehicles or aircraft, is to give the court jurisdiction to determine whether or not the person claiming to have an innocent interest actually had such an interest. Under the present practice the Secretary of the Treasury requires such a showing. . . . This section is of particular importance in connection with the discounting by a finance company of an automobile dealer's paper.

At the present time, the Secretary of the Treasury considers that the bootleg hazard is an element involved in the credit risk, and is just as much a part of the investigation by the finance company of a person as a credit risk as is his financial standing in the community. He requires that before a car be returned to the person claiming an innocent interest, the latter must prove that he made an investigation as to whether or not the purchaser had a bootlegger record, and found that he had none.

good faith and without suspicion of any undisclosed interest; although indeed, he had diligently but unsuccessfully sought information concerning all the facts from every person connected with the transaction. Thus construed the provision would require absolute forfeiture notwithstanding the claimant could not by the utmost diligence ascertain the true situation. No greater reason exists for saying a claimant should be relieved if he made unsuccessful inquiry of the seller concerning undisclosed matters than there is for relief when he had no cause to suspect the existence of an undisclosed interest—no cause to question appearances. A measure requiring absolute forfeiture under such circumstances probably would be expressed in language sufficiently plain to admit no reasonable doubt.

During many years innocent claimants had a clear remedy either by appeal to the discretion of the Secretary of the Treasury or by application for compromise addressed to the Attorney General and Treasury officials (*Wilson Motor Co.* v. *United States, supra*); or under the Prohibition Act, to the court (*Richbourg Motor Co.* v. *United States, supra*). This situation was called to the attention of the Senate Committee by the representative of the Treasury. He also pointed out that before restoring a car the Secretary required that the claimant "must prove that he made an investigation as to whether or not the purchaser had a bootlegger record and found that he had none." The Secretary "considers that the bootleg hazard is an element involved in the credit risk, and is just as much a part of the investigation by the finance company of a person as a credit risk as is his financial standing in the community." The Committee reported in respect of 204(b)(3)—"This last requirement is predicated upon the recognition of the 'bootleg hazard' as an element to be considered in investigating a person as a credit risk."

These facts indicate that Congress intended a reasonable inquiry concerning the bootleg risk should be made in connection with the investigation of financial responsibility. They negative the notion that wholly innocent claimant at his peril must show inquiry concerning something unknown and of which he had no suspicion. Dealers do not investigate what they have no cause to suspect.

The forfeiture acts are exceedingly drastic. They were intended for protection of the revenues, not to punish without fault. It would require unclouded language to compel the conclusion that

Congress abandoned the equitable policy, observed for a very long time, of relieving those who act in good faith and without negligence, and adopted an oppressive amendment not demanded by the tax officials or pointed out in the reports of its committees.

Sub-section (b) (3) was intended to prevent remission to a claimant who had failed to inquire when he should have done so, to one chargeable with willful negligence or purpose of fraud. It would be excessively harsh, unreasonable indeed, to say that one dealing in entire good faith must, at his peril, first discover and then make inquiry concerning somebody of whose existence he has no knowledge or suspicion. We cannot think Congress intended thus to burden dealing in all vehicles capable of transporting liquor.

It should be observed that the following things are possible subjects of seizure and forfeiture because of liquor law violations: "Every vessel, boat, cart, carriage, or other conveyance whatsoever, and all horses or other animals, and all things used in the removal or for the deposit or concealment, etc." "Vehicle" is thus defined—"That in or on which a person or thing is or may be carried from one place to another." A wheelbarrow, a covered wagon, a "Rolls-Royce", the patient mule, a "Man of War", and possibly a Pullman car or Ocean Liner is a vehicle. *Goldsmith-Grant Co.* v. *United States*, 254 U. S. 505; *United States* v. *Two Bay Mules, supra; United States* v. *One Bay Horse, supra.*

Sub-section (b) (3) applies not only to transactions by financial concerns like respondent but to those of individuals and corporations great or small. It contemplates an investigation and this presupposes some reason at least to suspect the existence of the subject of investigation. Congress took away from executive officers the power to mitigate forfeitures where the property exceeds $500 in value, and gave this to the court familiar with the circumstances; but it left with the Secretary of the Treasury discretion to remit when the value was below $500. The intent was to require the courts to exact proof of inquiries like those demanded by the Treasury Department practice, and disclosed by its representative before the Senate Committee. The petitioner's view, if adopted, would sanction one standard of remission for a vehicle worth $500, another when appraised at a dollar more.

The challenged decrees must be affirmed.

Mr. Justice BUTLER and Mr. Justice STONE took no part in the consideration or decision of these causes.

SUPREME COURT OF THE UNITED STATES.

Nos. 10 and 627.—October Term, 1938.

United States of America, *vs.* One 1936 Model Ford V-8 De Luxe Coach, Motor No. 18-3306511, Commercial Credit Company, Claimant.	Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.
United States of America, *vs.* Automobile Financing, Inc.	Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[May 22, 1939.]

Mr. Justice Douglas, dissenting.

Mr. Justice Black, Mr. Justice Frankfurter and I think that the judgments below should be reversed.

The problem here involved raises the question of the duty of automobile finance companies to investigate those who purchase cars from dealers, financed by those companies, in order to determine whether the ostensible purchasers are in reality straw men for bootleggers. Here the dealers knew that the named purchasers were only nominal purchasers; and they also knew the identity of the real purchasers. But the finance companies made no inquiry whatsoever of the dealers to ascertain if those purchasers were straw men. They made no inquiry in spite of the fact that the use of straw men by bootleggers was not novel. They made no inquiry in spite of the intimate business relations which exist between them and the dealers and the presumption of availability of such information which that relationship creates. And they now seek the benefit of an Act which the Congress passed to ameliorate some of the risks of confiscation and forfeiture. We do not think they have satisfied the burden which the Congress has placed upon them.

Sec. 204(a) gives the District Court "exclusive jurisdiction to remit or mitigate" forfeitures. Sec. 204(b) sets forth three conditions precedent which the claimant must satisfy before the court

may remit or mitigate a forfeiture. To satisfy the third of these conditions claimant must prove under certain circumstances that he made inquiry of designated law enforcement agencies concerning any person for whom a straw man purchaser was acting and that he was informed on such inquiry that such person had no record or reputation for violating the liquor laws. The circumstances under which claimant must make that inquiry exist "if it appears that the interest asserted by the claimant arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating laws of the United States or of any State relating to liquor has a right with respect to such vehicle or aircraft, ..."

To be sure, the phrasing of Sec. 204(b)(3) is difficult. But it means to us that a claimant must prove, in order to satisfy that condition, that he made a reasonable investigation to ascertain if the purchaser was a mere straw man acting for another or was a legitimate purchaser in his own right. The words "if it appears" carry that connotation. A contrary construction defeats the purpose of the Congress by placing an enormous premium on lack of diligence. That construction opens wide the doors to defraud the revenue, for finance companies need lift no finger nor make any effort to ascertain the existence of a straw man purchaser. Ignorance now is surely bliss. By failure to make inquiry they can effectively insulate themselves even from the knowledge which their business intimates—the dealers—have. Unless informed by disclosures, in the written contract or otherwise, they can contentedly assume that the purchaser is not a straw man for a bootlegger. That they will thus be voluntarily informed by the parties or by others seems unlikely. Since the function of the straw man is to conceal the bootlegger, neither the straw man nor the bootlegger can be expected to step forward with the information. And the automobile salesman is not likely to volunteer the information for his desire is to sell automobiles not to defeat sales. On the other hand, the interpretation which we urge would give the statute real meaning and significance in terms of this specific bootleg hazard which concerned the Congress on its enactment.[1]

[1] Precisely the investigation here urged seems to have been intended, for the Report of the Senate Committee on the Judiciary said as respects Sec. 204(b)(3): "This last requirement is predicated upon the recognition of the 'bootleg hazard' as an element to be considered in investigating a person as a credit risk. As a matter of sound business practice, automobile dealers, finance com-

Furthermore, the requirement for reasonable investigation cannot possibly place such a burden on finance companies as to force us to resolve an ambiguity in statutory language against forfeiture. In the cases before us a single question put the dealer or the purchaser might alone have disclosed the existence of a straw man. But no such simple inquiry was made. An investigation in each case was made to ascertain whether the named purchaser had a reputation or record for liquor violations. But the existence of a straw man was never probed. Certainly on such a matter investigational techniques are not novel, involved or unique. The responsibility for a reasonable investigation would add but imperceptibly if at all to the cost of doing business. In this field such investigation entails a burden which any legitimate enterprise should be prepared to carry. We need not conjure up hypothetical cases of extended inquiry which disclosed no straw man, for they would meet the test of reasonable investigation here proposed.

For these reasons, the judgments should be reversed.

---

panies, and prospective lienholders on automobiles examine records and make inquiry of references and credit rating agencies as to the owner's or prospective purchaser's reputation for paying his debts and his ability to do so. This subsection merely requires that in the making of such inquiry, the 'bootleg hazard' also be examined as one aspect of the credit risk.'' Sen. Rep. No. 1330, 74th Cong., 1st Sess., p. 6. To investigate the ''bootleg hazard'' as ''one aspect of the credit risk'' when inquiry is made of the ''prospective purchaser's reputation for paying his debts'' seems clearly to entail inquiry as to whether or not the prospective purchaser is a straw man for a bootlegger.

MICROCARD 22

TRADE MARK ®

MICROCARD® EDITIONS, INC.
PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393